

RETURNS AND PAPERS

Presented to the HOUSE OF LORDS, pursuant to an Order dated 11th June 1852,

AND

Ordered to be printed in Session 1852,

RELATIVE TO THE

AFFAIRS OF THE EAST INDIA COMPANY.

Sessional Number (263).

Die Veneris, 18° Martii 1853.—Ordered, That the several Papers and Documents presented to this House, and referred to the Select Committee on the Government of Indian Territories, be *delivered out*.

EAST INDIES.

RETURN

To an Order of the HOUSE OF LORDS, dated 11th June 1852.

FOR

COPIES of all CORRESPONDENCE between the GOVERNMENT OF INDIA and the COURT of DIRECTORS in transmitting or returning the proposed Codes and Consolidation of the Laws of INDIA :

AND ALSO,

COPY of any LETTER addressed by Mr. THOMASON to the GOVERNMENT OF INDIA in transmitting a Translation of the proposed Criminal Code.

East India House, }
30th June 1852. }

JAMES C. MELVILL.

Note.—No Letter addressed by Mr. Thomason to the Government of India, transmitting a Translation of the proposed Criminal Code, appears on the Records.

Ordered to be printed 30th June 1852.

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RETURNS, &c.

No. 1.

EXTRACT LEGISLATIVE LETTER FROM INDIA, dated 24th August (No. 2.) 1835.

Instructions to Law Commission
for Framing a Criminal Code;
Legislative Council, Cons. 15th June
1835, No. 1. to 3.

117. At the Consultation of the Date noted in the Margin, a Minute by Mr. Macaulay, dated the 4th June, was taken into consideration, in which, after noticing that the Time had come for furnishing the Law Commission with Instructions (in consequence of the Arrival of the Two of the Members of that Body), he stated, that it would require several Months before the Materials already collected relating to the Civil Law of India could be laid before the Commission, and that in the meanwhile he thought the Commission could not be better employed than in framing a Criminal Code for the whole Indian Empire. For the Reasons for first proceeding to the Criminal Law we beg to refer to Mr. Macaulay's Minute, a Copy of which accompanies this Despatch. The general Tenor of the Instructions which were proposed by Mr. Macaulay was that the Code should be framed according to Two great Principles, the Suppression of Crime with the smallest possible Infliction of Suffering, and the Ascertainment of Truth with the smallest possible Cost of Time and Money; that it should be complete, to the Abolition of all other Laws and Customs whatever; that it should extend over the whole of our Indian Empire, without Exception to Place or Person; and that it should be as uniform, as precise, and as concise as possible consistently with Circumstances.

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118. Mr. Ross recorded his entire Concurrence in the whole of these Views. Mr. Prinsep, in a Minute dated the 11th June, gave his Reasons for objecting to the Tenor of the Instructions proposed by Mr. Macaulay. These were partly that they were not sufficiently definite, but principally that they indicated to the Committee a Course different from that prescribed by Section Fifty-three of the late Act of 3d and 4th William IV. Cap. 85. Instead of directing the Commission to frame a Code in supercession of all existing Law, Mr. Prinsep would merely indicate the Subjects proper to be first made the Objects of *Inquiry* and *Report*, and thus employ that Body in assisting the Government to build up cautiously a more perfect Structure, by gradual Improvements of existing Laws and Institutions.

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119. We beg to refer to the above-mentioned Papers for a more full Explanation of the Views and Arguments now alluded to. After taking both Minutes into consideration the Majority of our Council resolved to issue Instructions conformably to the Propositions of Mr. Macaulay, Mr. Prinsep dissenting from that Resolution. A Copy of the Instructions sent accompanies this Despatch.

120. In submitting their revised Code, the Commission were directed to attach to the Draft their Reasons for every Provision, the Reason for which might not be obvious, collectively, if they agreed, or separately, if otherwise. The President of the Committee, to which Office we had appointed the Honourable Mr. Macaulay, as has been already reported to your Honourable Court, was declared to have a Casting Vote in case of an equal Division of the Members, who are at present Four in Number, including Mr. Cameron.

No. 2.

EXTRACT LEGISLATIVE LETTER from INDIA, dated 31st August (No. 3.) 1835.

Paragraphs 38 to 44. Measures of Police to be adopted with respect to Europeans.

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20. The First Object to which we have directed the Attention of the Law Commission is the Preparation of a complete Criminal Code, as reported in the 117th to 120th Paragraphs of the Despatch before so often referred to, which will be applicable to Europeans as well as Natives.

21. In consequence of the small Influx of Europeans at present, it has not appeared necessary, as yet, to make any immediate Laws for them exclusively. It is admitted that Uniformity of Law for all Classes is a desirable Object to be aimed at; nevertheless we do not deny that it may be advisable to annex to the Code some specific Penalties for Outrages committed by Europeans against the Persons and Properties, but more especially against the Habits and religious Feelings of the Natives. When considering of any Conditions that it may be necessary to impose upon private Persons coming from England to reside in India, we will scrupulously conform to your Honourable Court's Instructions, to make no Rules that may not be absolutely required for the Purpose of placing such Persons practically and completely within the Power of Justice.

No. 3.

GOVERNMENT OF INDIA to the COURT OF DIRECTORS.

(Legislative Department, No. 7. of 1837.)

Honourable Sirs,

Fort William, 5th June 1837.

We have now the Honour to submit a Copy of the Correspondence which we have had, as per Margin, with the Indian Law Commissioners, from which your Honourable Court will perceive that we have authorized to be printed the Draft of a Penal Code submitted by that Body.

Leg. Cons. 5th June 1837. No. 103.
Letter from the Indian Law Commissioners to the General in Council, dated 2d May 1837.
Minute by the Right Honourable the Governor General, dated 20th May 1837.
Letter from the Officiating Secretary to the Indian Law Commissioners, dated 5th June 1837.

33.

2. We have not deemed it necessary to forward to you on the present Occasion a Copy of that Code, as it cannot be said to be in a finished State; but we deemed it right to put you in possession of the Correspondence which has passed regarding it, as well to show what has already been effected by the Labours of the Commissioners, as to obtain through the Means of your Honourable Court an Amendment of the Defects of the existing Law as discussed in Paragraphs 26. to 32. of the Commissioners Letter, to which we solicit your particular and early Attention.

Pages 29 to 31.

We have, &c.
(Signed) AUCKLAND.
A. ROSS.
W. MORISON.
H. SHAKESPEAR.
T. B. MACAULAY.

No. 4.

EXTRACT LEGISLATIVE LETTER from INDIA, dated 8th January (No. 1.) 1838.

2. We embrace this Opportunity of forwarding Two printed Copies of the Draft of a Penal Code prepared by the Law Commissioners; other Copies shall be immediately sent by Sea. The most important Subject of this Draft will of course come under our immediate Consideration, and we shall lose no Time in putting your Honourable Court in possession of the Result of our Deliberations.

No. 5.

GOVERNMENT OF INDIA to the COURT OF DIRECTORS.

(Legislative Department, No. 2. of 1838.)

Head Quarters, Camp Meerut,
12th February 1838.

Honourable Sirs,

WITH reference to the Despatch No. 1. of 1838 in this Department, dated the 8th ultimo, from the Honourable the President in Council to your Honourable Court, I have the Honour to submit Copy of a Communication I have this Day caused to be made to the President in Council on the Subject of the Penal Code, and to express my Hope that the Course of proceeding therein indicated will meet the Approbation of your Honourable Court.

I have, &c.

(Signed) AUCKLAND.

Page 24.

No. 6.

GOVERNMENT OF INDIA to the COURT OF DIRECTORS.

(Legislative Department, No. 5. of 1838.)

Honourable Sirs,

Fort William, 9th March 1838.

IN continuation of our Letter No. 1. of 1838, dated the 8th ultimo, and with especial Reference to the Despatch addressed to your Honourable Court by the Right Honourable the Governor General, under Date the 12th ultimo, No. 2.,

Leg., Cons. 12th February 1838,
No. 3. to 9.

we have the Honour to submit the accompanying Papers, from which it will be seen that our Sentiments with respect to the Manner in which the Discussion of the proposed Penal Code should be entered upon accord in the main with those expressed in Mr. Secretary Macnaghten's Letter, of which a Copy has been furnished with his Lordship's Despatch, and to which we have caused the accompanying Reply to be made.

Page 36.

We have, &c.

(Signed) A. ROSS.
W. MORISON.
C. H. CAMERON.

No. 7.

EXTRACT LEGISLATIVE LETTER from GOVERNOR GENERAL, dated Simla, 1st May (No. 3.) 1838.

7. Adverting to a Communication made to the President in Council by my Desire, under Date the 12th February last, a Copy of which was forwarded for the Information of your Honourable Court with my Despatch No. 2. of 1838, I transmit Copy of a Letter from Mr. Officiating Secretary Mangles, dated the 26th February last, together with its Enclosure, and of the Reply I caused to be made with reference to the Fourth Paragraph of that Communication, on the Course to be pursued for obtaining the Opinions of the Judges of the Sudder Courts at each of the Presidencies and at Allahabad on the Draft of a Penal Code prepared by the Law Commissioners, not only as to whether Provision is made in the Code for the different Offences which are prevalent in India, but also as to the Necessity of the proposed Enactments, and the Adaptation of the proposed Penalties with reference to all the Circumstances of the Country, and to the Habits and Feelings of the large and various Population which will be affected by them.

Page 37.

Page 38.

No. 8.

GOVERNMENT OF INDIA to the COURT OF DIRECTORS.

(Legislative Department, No. 8. of 1838.)

Honourable Sirs,

Fort William, 25th May 1838.

With advertence to Paragraph Seven of the Despatch from the Right Honourable the Governor General, dated the 1st instant No. 3., and in
(263) B 2 continuation

Page 37.

continuation of our Letter No. 5. of 1838, we have the Honour to state, that we have addressed the several subordinate Governments, requesting them to communicate Copy of Mr. Secretary Macnaghten's Letter, under Date the 13th April, to the Sudder Courts respectively, for their Information and Guidance in their Examination of the proposed Penal Code.

Leg., Cons. 7th May 1838, No. 1. to 5.

We have, &c.

(Signed)

A. ROSS.
W. MORISON.
W. W. BIRD.
A. AMOS.

No. 9.

GOVERNMENT OF INDIA to the COURT of DIRECTORS.

(Legislative Department, No. 9. of 1838.)

Honourable Sirs,

Fort William, 26th May 1838.

Page 33.

With reference to the concluding Paragraph of Mr. Secretary Macnaghten's Letter to the Address of the Law Commissioners, submitted with our separate Despatch No. 7. dated the 5th June 1837, we have the Honour to lay before

Leg., Cons. 5th March 1838, Nos. 29a, 30.
" 16th April 1838, Nos. 1. and 2.

you the accompanying Copies of Correspondence relative to the Preparation of the Codes of Civil and Criminal Procedure.

Page 145, &c.

2. The Law Commissioners thought it necessary, in order to the satisfactory Accomplishment of this arduous and highly important Task, that they, or some of them, should "visit the Territories subject to all the Indian Presidencies, for the Purpose of instituting Inquiries of a Nature too minute to be effectually carried on elsewhere than in the Neighbourhood to which they relate."

3. After consulting the Right Honourable the Governor General, we informed the Commissioners that, in the present State of the Commission, it was not desirable that they should quit the Presidency or separate, and that, consequently, they should proceed in the Preparation of an Outline of such a System as in the actual State of their Information might appear to them best adapted to the whole or to the various Parts of the Territories of the East India Company.

We have, &c.

(Signed)

A. ROSS.
W. MORISON.
W. W. BIRD.
A. AMOS.

No. 10.

EXTRACT LEGISLATIVE LETTER from INDIA, dated 4th February (No. 3.) 1839.

No. 1 of 1838, dated 8th January, from the Resident in Council.
No. 2. of 1838, dated 12th February, from the Governor General.
No. 5. of 1838, dated 9th March, from Resident in Council.
No. 3. of 1838, dated 1st May, Paragraph 7., from the Governor General.
No. 8. of 1838, dated 25th May, from the Resident in Council.
Sir H. Compton, Chief Justice, Bombay.
Sir J. Awdry, Puisne Judge, Bombay.
G. Norton, Esq., Advocate General, Madras.
J. Cochrane, Esq., Honourable Company's Standing Council, Calcutta.
A Representation from certain Missionaries of the Established and Dissenting Churches in Calcutta, commenting upon Clause XV. of the Code, has also been received.

2. By the Despatches cited on the Margin your Honourable Court have been informed of the Measures which we have adopted preliminary to entering upon the Consideration of the Provisions of the proposed Penal Code. In reply to our several Calls we have, up to this Date, received Replies from the Gentlemen named on the Margin. As we have been promised other Communications upon the Subject of the Code from Persons whose Opinions are entitled to the highest Consideration, we have deferred passing any Resolution upon its Provisions, though we have bestowed considerable Attention upon them.

No. 11.

EXTRACT LEGISLATIVE LETTER from INDIA, dated 22d April (No. 11.) 1839.

Proposed Translation of the Penal Code.
Leg., Cons. 8th Oct. 1838, No. 89. to 42.
" 3d Dec. " 51. to 33.

Page 53, &c

5. The accompanying Communications from the Government of Fort St. George and Bombay have reference to the Subject of translating the proposed Penal Code, submitted by the Indian Law Commissioners, into the Languages current in the Territories subject to those Presidencies.

6. Pending the laborious Revision which the proposed Code must undergo, we have refrained from ordering its Translation into Persian or the vernacular Languages of the Provinces subject to the Presidency of Fort William; and we were of opinion that the Translations proposed by the Governments of Fort St. George and Bombay should for the same Reason be deferred.

7. We have it, however, in contemplation to cause a Translation to be made in the Persian Language, if not in any others, of some particular Chapters of the proposed Code, for the Purpose of being submitted to Mahomedan Lawyers, and when this shall be effected a Number of Copies of the Work will be sent to Madras and to Bombay, if necessary, for Reference to the Mahomedan Lawyers in those Presidencies.

No. 12.

EXTRACT LEGISLATIVE LETTER from INDIA, dated 16th September (No. 22.) 1839.

No. 3. of 1839, Penal Code.

14. In reply to the several Letters which had been written by this Government requesting the Opinions, as respects the Provisions of the proposed Penal Code, of the local Governments, and their subordinate Courts and Offices, and of the Judges and Recorder of Her Majesty's Courts, and the Advocates General and Standing Counsel at the Three Presidencies, we have

Sir H. Compton, Chief Justice, Bombay.
Sir J. W. Awdry, Puisne Judge, Bombay.
G. Norton, Esq., Advocate General, Madras.
J. Cochrane, Esq., Standing Counsel, Calcutta.
Letter to Secretary to Government of Bombay.
" Secretaries to Governments of Bengal,
Madras, and North-west Provinces.
Letter to Sir E. Ryan, Chief Justice, Calcutta.
" Sir J. P. Grant, Puisne Justice, Calcutta.
" Sir R. B. Comyn, Chief Justice, Madras.
" Sir D. J. Gubbler, Puisne Judge, Madras.
" Sir W. Norris, Recorder of the Straits.
" Sir J. Awdry, Chief Justice, Bombay.
" Advocate General at Calcutta and Bombay.
" Sir H. Seton, Puisne Justice, Calcutta.
All dated 12th August 1839.

up to this Date received Replies (some of which promised further Communications) from the Government of Bombay and the Gentlemen named on the Margin. On the Receipt of your Honourable Court's Despatch, under Consideration, we have repeated our Request to those Authorities and Functionaries from whom we have received no Reply, and have solicited those who promised a

further Communication to favour us with their Sentiments at their early Convenience.

Letter to Mr. W. H. Macnaghten.
" Mr. H. T. Prinsep.
" General Fraser, Hyderabad.
" Major Sleemant.
" Colonel Sutherland.
All dated 2d September 1839.

15. We have now also specially requested the Suggestions and Observations of the Officers named on the Margin on the proposed Code.

No. 13.

GOVERNMENT of INDIA to the COURT of DIRECTORS.

(Legislative Department, No. 29. of 1842.)

Honourable Sirs,

Fort William, 2d December 1842.

THE Subject of the Penal Code prepared by the Indian Law Commissioners was last referred to in the Despatches from this Department, as per Margin.

No. 11. of 1839, dated 22d April, Para. 5.
No. 22. of 1839, dated 16th September, P. 14 and 15.

2. We have now the Honour to transmit Copies of such of the Replies as we have up to this Date received to our Letters requesting the Opinions, as respects the Provisions of the proposed Code, of the local Governments and their subordinate Courts and Boards and other select Officers, and of the Judges and Recorders of Her Majesty's Courts, and the Advocates General and Standing Counsel at the Three Presidencies. A Communication from certain Missionaries of the Establishment and Dissenting Bodies in Calcutta

and its Vicinity, relative to Chapter XV. of the Code, is also forwarded herewith. We append a List of the Papers under Transmission.

Page 455.

3. We beg to draw the Attention of your Honourable Court to the accompanying Minute recorded by our Colleague Mr. Amos, dated the 21st October, showing the present State of this important Subject; how some Portions of the Code have been already disposed of in special Laws, and what his Views are in regard to the Consideration of the entire Code.

4. We are not yet prepared to take up the Question whether to introduce generally the whole or any particular Chapters of this Criminal Code in their present Form, and, until that Question should be properly before us, it would, we conceive, be premature, and could answer no useful Purpose, for us individually to state our Opinions on the several Parts of such a Measure.

We have, &c.

(Signed)

W. W. BIRD.

WM. CASEMENT.

H. T. PRINSEP.

A. AMOS.

Enclosure in No. 13.

LIST of PAPERS regarding the PENAL CODE

FORT ST. GEORGE.

- | | | |
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| Page 57. | Letter No. 76/290, dated 7th April 1840. From Chief Secretary, Fort St. George, to Secretary, Government of India. | With reference to Correspondence quoted, forwards Letter from Registrar Foujdarry Adawlut enclosing Opinions of the Second and Third Judges of that Court, the Opinions of the subordinate Authorities in the Provinces, and a Digest thereof on the Draft Penal Code. Also Letters from Court of Commissioners for Small Debts, the Acting Chief Magistrate and Superintendent of Police. (10 Enclosures.) |
| Page 236. | Letter 445/727, dated 10th September 1840. From Chief Secretary, Fort St. George, to Secretary, Government, India. | In continuation of foregoing Letter of 7th April 1840, forwards Extract from Proceedings, Board of Revenue, containing their Opinion of the Penal Code (1 Enclosure.) |
| Page 213. | Letter dated 9th July 1838. From G. Norton, Advocate General, Fort St. George, to Secretary, Government, Legislative Department. | In reply to Order of 12th February 1838, communicates Observations on the Penal Code. |
| Page 273. | Letter No. 472, dated 13th August 1838. From Secretary, Government, India, to Advocate General, Madras. | Communicating the Thanks of the President in Council for his Remarks. |
| Page 238. | Letter dated 28th October 1840. From Sir E. I. Gambier, Judge, Fort St. George, to Government of India. | In reply to Letter of 12th August 1839, communicates his Sentiments on the Code. |
| Page 239. | Letter dated 11th September 1839. From Sir R. Comyn, Chief Justice, Fort St. George, to Government of India. | In reply to Letter of 12th August, forwards Observations on the Penal Code. |
| Page 210. | Letter dated 11th November 1839. From Sir R. Comyn, Chief Justice, Fort St. George, to Government of India. | His Observations on the proposed Penal Code. |
| Page 50. | Letter No. 7, dated 4th January 1839. From Chief Secretary, Fort St. George, to Officiating Secretary, Government, India. | Forwarding Extract Proceedings Foujdarry Adawlut, and other Papers regarding false Weights and Measures, for the Consideration of the Law Commission. |

BOMBAY.

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|-----------|--|--|
| Page 273. | Letter dated 13th April 1838. From Sir H. A. D. Compton, Bombay, to Government of India. | In reply to Letter of 12th February, making a few Observations on the Penal Code, and apologizing from Want of Leisure to do more. |
| Page 274. | Letter No. 311, dated 30th April 1838. From Government of India to Sir H. Compton. | Requesting him to favour Government with his Opinion at Length. |

Letter

Letter dated 9th June 1838. From Sir H. Compton to Government of India.

In reply to foregoing^d of 30th April, forwards his Opinions on the Provisions of the Code. (1 Enclosure.)

Page 275.

Letter No. 432, dated 2d July 1838. From Government of India to Sir H. Compton.

Acknowledge foregoing Letter.

Page 299.

Letter dated 2d June 1838. From Sir J. Awdry to Government of India.

His Opinions on the proposed Penal Code.

Page 300.

Letter No. 429, dated 2d July 1838. Government of India to Sir J. Awdry.

Acknowledge with Thanks the foregoing Communication.

Page 311.

Letter No. 1567, dated 10th June 1839. From Secretary, Government, Bombay, to Secretary, Government, India.

With reference to Letter of 10th November last, forwards Letter, Registrar Sudder Foujdarry Adawlut, and Enclosures Minutes of the Judges of the Court, and Reports of subordinate Authorities. Such as have not replied have been urged to do so as early as possible. (1 Enclosure.)

Page 311.

Letter No. 2987, dated 15th November 1839. From Acting Secretary, Government, Bombay, to Officiating Secretary, Government, India.

With reference to Orders of 12th August last, forwards Letter from Acting Register Sudder Foujdarry Adawlut, and enclosed Reports from Magistrate of Rutnagherry and Acting Joint Magistrate of Broach on Penal Code. (1 Enclosure.)

Page 339.

BENGAL.

Letter No. 1116, dated 5th June 1838. From Secretary, Government, Bengal, to Officiating Secretary, Government, India.

With a Letter and Enclosures from Registrar Sudder Nizamut Adawlut, regarding Punishment to Prisoners who incapacitate themselves for Labour. (1 Enclosure.)

Page 343.

Letter dated 9th July 1838. From J. Cochrane, Standing Counsel, to Officiating Secretary, Government of India.

Forwarding Remarks on the Penal Code. (1 Enclosure.)

Page 365

Letter No. 247, dated 23d July 1838. From Officiating Secretary, Government, India, to J. Cochrane, Esq.

Thanking him for his Remarks.

Page 371

Letter dated 28th September 1839. From Sir J. P. Grant to Officiating Secretary, Government, India.

Forwarding his Opinion on the Penal Code. (1 Enclosure.)

Page 351

Draft Note by A. Amos, Esq. to Sir J. P. Grant.

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Page 351

Letter No. 433, dated 14th October 1839. From Officiating Secretary, Government, India, to Sir J. P. Grant.

In reply to foregoing Letter

Page 351

Letter dated 22d October 1839. From Sir H. W. Seton to Government of India.

In reply to Letter of 12th August 1839. Communicates his Remarks on the Penal Code.

Page 355.

Letter dated . . . From Rev. W. Morton, M. L. M. S., to Secretary, Government of India.

Forwarding the Remarks of several Missionaries on the Penal Code. (1 Enclosure.)

Page 371.

Letter No. 123, dated 2d April 1838. From Officiating Secretary, Government, India, to Rev. W. Morton.

In reply to foregoing Letter, will take the Remarks of the Missionaries into consideration.

Page 378.

Letter dated 8th November 1838. From J. Reily, P. S. A. Dacca, to A. Amos, Esq.

Forwarding his Observations on the Penal Code. (1 Enclosure.)

Page 317.

Letter No. 10, dated 18th February 1840. From Major Sleeman to Secretary, Government.

Returns Copy of the Penal Code, with his Notes, and submits Remarks. (1 Enclosure.)

Page 378.

Letter No. 11, dated 19th February 1840. From same to same.

Requests the Addition of some Remarks to foregoing Letter of 18th February.

Page 381.

Letter No. 16, dated 6th March 1840. From same to same.

Ditto.

Page 381

Letter No. 138, dated 9th March 1840. From Secretary, India, to Secretary, Indian Law Commission.

With Extracts from foregoing Letter by Major Sleeman.

Page 382.

N. W. PROVINCES.

- Page 382. Letter No. 2271, dated 14th September 1839. From Secretary, Governor General, for N. W. Provinces, to Officiating Secretary, Government, India. Acknowledges Letter of 12th August 1839, and forwards Mr. C. W. Fagan's Letter and Observations on the Penal Code. (1 Enclosure.)
- Page 392. Note by the Honourable A. Amos. Mr. Fagan deserves the Thanks of Government.
- Page 392. Letter No. 538, dated 14th October 1839. From Officiating Secretary, Government, India, to Secretary, Governor General, for N. W. Provinces. Acknowledges Letter of 14th September 1839. The N. W. Provinces Government should call for the Opinions of Individuals on the Code. Names some.
- Page 392. Letter No. 539, dated 14th October 1839. From Officiating Secretary, Government, India, to C. W. Fagan, Esq. Returning Thanks for his Remarks on the Code.
- Page 393. Letter No. 2658, dated 24th October 1839. From Secretary, Governor General, for N. W. Provinces, to Officiating Secretary, Government, India. With reference to Orders of 12th August 1839, forwarding Correspondence with the Officiating Register Nizamut Adawlut, N. W. Provinces. The Court have received the Opinions of some Officers; promise their own, and suggest that Mr. Turnbull (Judge on Leave) be called on for an Opinion. The Government object to making any official Call on Mr. Turnbull.
- Page 394. Letter No. 2781, dated 15th November 1839. From Secretary, Governor for N. W. Provinces, to Officiating Secretary, Government, India. In reply to Letter of 14th October, Mr. R. M. Bird has been called on for his Opinion. As regards Mr. Turnbull, refers to foregoing Letter of 24th October 1839.
- Page 394. Letter No. 650, dated 24th February 1840. From Officiating Secretary, Lieutenant Governor, N. W. Provinces, to Secretary Government of India. With reference to Mr. Currie's Letter of 24th October last, forwards Letter from Officiating Register Nizamut Adawlut, containing the Opinion of the Court on the Penal Code, and forwarding the Opinions of Commissioners, Judges, and Magistrates. (3 Enclosures.)

PENANG.

- Page 155. Letter dated 4th October 1839. From W. Norris, Recorder, to Secretary of India. In reply to Letter of 12th August 1839, promises his Remarks on the Code.

No. 14.

EXTRACT LEGISLATIVE LETTER from INDIA, dated 27th December (No. 43.) 1845.
(Home.)

- Page 9. Leg., Cons. 26th April 1845.
Nov. 12 and 13. 14. We forwarded to the Indian Law Commissioners the Reports and Opinions on the Provisions of the Penal Code received from the several Presidencies (reported to your Honourable Court in our Despatch No. 29., dated 2d December 1842.)

No. 15.

EXTRACT LEGISLATIVE LETTER from INDIA, dated 20th February (No. 3.) 1847.
(Home.)

1. In compliance with the Order contained in your Despatch No. 18. of 1846, dated the 2d December, we have the Honour to transmit Two Copies of a Report, dated the 23d July, and a Postscript to the same, dated 5th November 1846, furnished by the Indian Law Commissioners, with reference to the Draft Penal Code; also Copies of the Papers on the Subject which have been brought on Record since the Date of our Despatch No. 3. of 1839. The Report under Transmission is the only One received from the Law Commissioners during the past Year.

Laid before Par-
liament, 22d No-
vember 1847.

No. 16.

EXTRACT LEGISLATIVE LETTER from INDIA, dated 22d May (No. 13.) 1847.
(Home.)

1. IN continuation of our Despatch No. 3. of 1847, dated 20th February, we have the Honour to transmit to your Honourable Court the accompanying additional Copies of a printed Report, dated 23d July, and a Postscript to the same, dated 5th November 1846, furnished by the Indian Law Commissioners, with reference to the Draft Penal Code, also Copies of our Minutes as per Margin, and to state that the Judges of the Supreme Courts at the several Presidencies, and the Governments of those Presidencies, have respectively been furnished with Copies of the Report, the local Governments having been also requested to distribute them among such of the Public Functionaries as were consulted on the Provisions of the Code, and whose Observations are noticed by the Law Commissioners. The Commissioners have recently completed their Second Report on further Portions of the Code, which will be transmitted to your Honourable Court as soon as printed.

Leg., Cons. 20th March 1847,
Nos. 3 and 17 a.

Minute by the Honourable Mr. Cameron,
dated 13th November 1846.
Minute by the Honourable Sir Herbert
Maddock, dated 24th February 1847.
Minute by the Honourable Mr. Millett,
dated 12th March 1847.

Vide page 472
Page 473-475.

No. 17.

GOVERNMENT of INDIA to the COURT of DIRECTORS.
(Home Department, Legislative, No. 2.)

Honourable Sirs,

Fort William, 8th January 1848.

IN continuation of our Despatch No. 3. of 1847, dated 20th February, we have the Honour to transmit Two Copies of the Second and concluding Report of the 24th June 1847, furnished by the Indian Law Commissioners, with reference to the Draft Penal Code, together with Copies of the Papers on the Subject which have been brought on Record since the Date of that Despatch. The Report under Transmission is the only One received from the Law Commissioners during the past Year.

Laid before Par-
liament, 12th May
1848.

We have, &c.

(Signed)

HARDINGE

F. MILLETT.

T. H. MADDOCK.

F. CURRIE.

C. H. CAMERON.

No. 18.

GOVERNMENT of INDIA to the COURT of DIRECTORS.
(Home Department, Legislative, No. 17.)

Honourable Sirs,

Fort William, 7th April 1848.

ON the Receipt of your Honourable Court's Despatch No. 9. of 1847, dated the 15th September, we selected from the Penal Code prepared by the Law Commissioners, Chapter XVIII., relating to "Offences affecting the Human Body," and Chapter III., "General Exceptions," and committed to Mr. H. M. Elliot the Task of translating these Parts into the Oordoo Language, that Gentleman, owing to his eminent Acquirements, being the fittest Person we could employ for the Purpose.

Leg., Cons. 20th November 1847,
No. 1.
24th December 1847, Nos. 1 and 3.
1st April 1848.

2. We now have the Honour to transmit Copies of Mr. Elliot's Translation, and of his Letter, dated 12th February, containing Observations on the Subject, which we recommend to the favourable Notice of your Honourable Court.

Page 474 et seq.

3. We have expressed to Mr. Elliot the Opinion of the Government that he has executed the Translation admirably, and we have conveyed to him our Acknowledgments for the Service performed.

4. We have much Satisfaction in referring your Honourable Court to the Remarks of the Translator, and especially to the concluding Sentence of his Letter:—"There can be little Doubt that, with the general Knowledge now prevalent of native Usages, Sentiments, and Institutions, many Functionaries will be found possessed of this Degree of Knowledge, and that more
(263.) C " than

“ than Half of them will, with a little Assistance from Natives, be fully competent to transpose the Language of this admirable Code into Forms accommodated to the popular Intellect of the Country.”

Laid before Parliament, 2d April 1849.

5. We transmit by this Opportunity a printed Copy of the Law Commissioners Report, dated the 1st February, submitting a Scheme of Pleading and Procedure, with Forms of Indictment, adapted to the Provisions of the Penal Code. Forty Copies of this Report will be forwarded as usual by a Sailing Vessel.

We have, &c.
(Signed) DALHOUSIE.
T. H. MADDOCK.
F. MILLETT.
J. H. LITTLER.

No. 19.

F. J. HALLIDAY Esq. to J. C. MELVILL Esq.
(Home Department, Legislative, No. 28.)

Sir,

Fort William, 1st December 1848.

Laid before Parliament, 2d April 1849.

I AM directed to forward, for the Purpose of being laid before the Honourable the Court of Directors, the accompanying Two printed Copies of the Observations by Sir Lawrence Peel, Knight, on the Indian Penal Code.

2. Thirty-eight Copies will be sent to your Address by Sea.

I have, &c.
(Signed) F. J. HALLIDAY,
Officiating Secretary to the Government of India.

No. 20.

GOVERNMENT OF INDIA to the COURT OF DIRECTORS.
(Home Department, Legislative, No. 1. of 1849.)

Honourable Sirs,

Fort William, 20th January 1849.

Laid before Parliament, 13th May 1848.

In continuance of our Despatch No. 2. of 1848, dated 8th January, we have the Honour to transmit Two Copies of a Report dated 1st February 1848, by the Indian Law Commissioners, on a Scheme of Pleading and Procedure, with Forms of Indictment adapted to the Provisions of the Penal Code, together with Copies of Papers on the Subject. The Report under Transmission is the only one received from the Law Commissioners during the past Year.

We have, &c.
(Signed) T. H. MADDOCK.
J. H. LITTLER.
J. LEWIS.
J. E. D. BETHUNE.

No. 21.

EXTRACT LEGISLATIVE LETTER from INDIA, dated 14th July (No. 15.) 1849.
(Home.)

Sir Lawrence Peel's Observations on the Penal Code, and on the Law Commissioners Second Report upon that Code.
Leg. Cons. 18th Nov. 1848, Nos. 1 and 2.

9. With the Letter from this Department addressed to the Secretary at the India House, dated 1st December, No. 28. of 1848, Forty printed Copies of the Observations made by Sir Lawrence Peel, the Chief Justice at Calcutta, on the Indian Penal Code, were transmitted to your Honourable Court. We have since sent Copies of the Document in question to the Judges of the Supreme Courts at Madras and Bombay, and to the several subordinate Governments.

No. 22.

No. 22.

EXTRACT LEGISLATIVE LETTER from INDIA, dated 10th May (No. 7.) 1850.

Minute by the Governor General, dated 19th April 1850.
 " by Sir F. Currie, Bart., dated 4th May 1850.
 " by J. Lewis, dated 8th May 1850.
 " by J. E. D. Bethune, dated 9th May 1850.
 " by Sir J. H. Littler, dated 10th May 1850.
 " by the Hon. J. E. D. Bethune, dated 29th April 1850.
 " by Sir J. H. Littler, dated 2d May 1850.
 " by Sir F. Currie, Bart., dated 2d May 1850.
 " by the Hon. J. Lewis, dated 8th May 1850.
 Draft Act declaring the Law as to the Privilege of Her Majesty's European Subjects.
 Draft Act for abolishing Exemption from the Jurisdiction of the East India Company's Criminal Courts.
 Draft Act for Trial by Jury.

entered earnestly upon the Consideration of the Penal Code prepared by the Indian Law Commissioners, the Enactment of which was suggested by your Honourable Court in your Despatch No. 20., dated the 20th September 1848.

2. Your Honourable Court will perceive that it has been determined not to proceed with the Draft Act at present, but to enter on a wider Field of Legislation, in connexion with and in furtherance of the Objects which these Drafts were intended to accomplish. With this View we have now

No. 23.

F. J. HALLIDAY Esq. to J. C. MELVILL Esq.

(Home Department, Legislative, No. 7. of 1851.)

Sir,

Fort William, 8th April 1851.

I AM directed to forward, for the Use of the Honourable the Court of Directors, Twenty printed Copies of the Penal Code translated into Urdu, under the Orders of the Honourable the Lieutenant Governor of the North-western Provinces, by Mr. G. F. Edmonstone of the Civil Service.

I have, &c.

(Signed) FRED. JAS. HALLIDAY,
 Secretary to the Government of India.

No. 24.

GOVERNMENT of INDIA to the COURT of DIRECTORS.

(Home Department, Legislative, No. 15. of 1851.)

Honourable Sirs,

Fort William, 9th August 1851.

Home Department, Legislative, 9th August 1851.
 Minute by Sir Herbert Maddock, Kt., dated 18th Nov. 1848,
 and concurred in by the Members of Government.
 Minute by the Hon. Mr. Bethune, dated 10th May 1850.
 " by Sir J. H. Littler, dated 12th May 1850.
 " by Sir F. Currie, dated 14th May 1850.
 " by the Hon. J. Lewis, dated 15th May 1850.
 " by the Hon. Mr. Bethune, dated 16th May 1850.
 " by Sir J. H. Littler, dated 20th May 1850.
 " by Sir F. Currie, dated 20th May 1850.
 " by the Honourable J. Lewis, dated 22d May 1850.
 " by the Hon. Mr. Bethune, dated 24th May 1850.
 " by the Hon. Mr. Bethune, dated 24th May 1850.
 " by the Governor General, dated 8th June 1850.
 " by Sir F. Currie, dated 25th June 1850.
 " by the Governor General, dated 1st July 1850.
 " by the Governor General, dated 20th July 1850.
 " by the Governor General, dated 17th April 1851.
 " by the Governor General, dated 7th July 1851.

With reference to your Honourable Court's Despatch No. 15., dated the 27th November last, we have the Honour to transmit the accompanying Correspondence and the several Minutes as per Margin, together with Twenty printed Copies of the revised Edition of the Penal Code which has now been completed.

2. Copies of this Code have been forwarded to the Judges of the Supreme and Sudder Courts at Calcutta, and their Sentiments have been invited on its Provisions. We shall not fail to transmit their Replies, when received, to your Honourable Court.

We have, &c.

(Signed) J. H. LITTLER.
 F. CURRIE.
 J. LEWIS.

No. 25.

GOVERNMENT of INDIA to the COURT of DIRECTORS.

(Home Department, Legislative, No. 17. of 1851.)

Honourable Sirs,

Fort William, 17th September 1851.

We have the Honour to acknowledge the Receipt of your Honourable Court's Despatch No. 11., dated 6th ultimo, expressing a Wish to be informed of the Progress

Progress made in the Revision of the Penal Code, and to state that Copies of the revised Code, with the Correspondence and Minutes relating thereto, were forwarded to your Honourable Court with our Letter dated 9th August, No. 15.

We have, &c.

(Signed)

J. H. LITTLER.

F. CURRIE.

J. LEWIS.

No. 26.

EXTRACT LEGISLATIVE LETTER to INDIA, dated 1st March (No. 4.) 1837.

Letter from, dated 24th August (No. 2.) 1835 (117. to 120.), and 20. of Letter 31st August (No. 3.) 1835. Instructions to the Law Commission for the Formation of a Criminal Code.

28. WE perceive that these Instructions were transcribed from Mr. Macaulay's Minute on the Subject; but the Remarks thereupon, which had been recorded by Mr. Prinsep, do not seem to have been taken into consideration. They are so much in conformity to the Views of the Legislature, as unfolded in the 53d and 54th Sections of the 3d and 4th Gul. IV. c. 85., that we cannot doubt but the Course of Proceeding recommended by Mr. Prinsep must substantially have been pursued by the Law Commissioners. By the Act just referred to, the Commissioners are enjoined to inquire fully into the Nature and Operation of all Laws, "whether Civil or Criminal, written " or customary, prevailing and in force in any Part of the said Territories, and " whereto any Inhabitants of the said Territories, whether Europeans or others, " are now subject." The " Researches and Inquiries " of the Commissioners are contemplated by the Act as preliminary to whatever Alterations of the Law may be judged necessary, and One main Object in view is especially mentioned, viz., that Regard may be had "to the Distinction of Castes, Difference " of Religion, and the Manners and Opinions prevailing among different Races " and in different Parts of the said Territories." We feel assured that it has not been your Intention that these Views of Parliament should be overlooked by the Law Commissioners in carrying into effect your Instructions for framing " a complete Criminal Code for all Parts of the British Indian Empire, and for " every Class of People, of whatever Religion or Nation, resident within its " Limits," whereby "every other Law whatever relating to Criminal Justice " will be at once abolished, from the Day on which it shall be promulgated." In that Confidence we approve of your Instructions to the Commissioners.

No. 27.

EXTRACT LEGISLATIVE LETTER to INDIA, dated 12th December (No. 18.) 1838.

Legislative Letter, dated 26th May (No. 9.) 1838. Preparation of a Code of Civil and Criminal Procedure.

Paragraph 1. WE concur in the Propriety of your Instructions to the Law Commissioners, that they should begin with preparing a general Outline of a Code of Procedure, and, until that is done and approved, that they should not quit Calcutta nor separate. With the view of saving Time and Expense, we trust that it will not be found necessary for them to visit the several Presidencies collectively.

No. 28.

COURT OF DIRECTORS to the GOVERNMENT OF INDIA.

(Legislative Department (No. 3.), London, 6th March 1839.)

Our Governor General of India in Council.

*Transmission of Two Copies of the Penal Code.

Whole Legislative Letter, dated 5th June (No. 7.) 1837.
Whole Legislative Letter, dated 8th January (No. 1.) 1838.
Whole Legislative Letter to Governor General, 12th February (No. 2.) 1838.
Whole Legislative Letter, dated 9th March (No. 5.) 1838.
Paragraph 7, Legislative Letter to Governor General, dated 1st May (No. 3.) 1838.
Whole Legislative Letter, dated 23rd May (No. 8.) 1838.

Attention of Persons conversant with the Subjects of which it treats, the Authorities

1. We entirely approve of the Course of Proceeding with regard to the Penal Code which is laid down in the Instructions from the Governor General to the Government of India. After that Work shall for some Time have engaged the

Authorities in India and in England will feel themselves more competent than at present to form a satisfactory Judgment concerning its general Merits, and to determine what Sort of Scrutiny it ought to undergo before being brought into practical Operation. This cautious Mode of dealing with it seems to be suggested by the Law Commissioners, when they say, "We have done as much as could reasonably be expected from us if we have furnished the Government with that which may, by Suggestions from experienced and judicious Persons, be improved into a good Code." It is the more necessary, seeing, "that the System of Penal Law which they propose is not a Digest of any existing System, and that no existing System has furnished them even with a Ground-work." It arises also out of the Consideration that the Penal Code forms but a Part of the Work which the Law Commissioners have undertaken. On that Point they have thus expressed themselves: "Your Lordship in Council will be prepared to find in this Performance those Defects which must necessarily be found in the First Portion of a Code. Such is the Relation which exists between the different Parts of the Law, that no Part can be brought to Perfection while the other Parts remain rude. The Penal Code cannot be clear and explicit while the substantive Civil Law and the Law of Procedure are dark and confused."

2. The Governor General has therefore anticipated our Views in desiring that some Interval may be allowed to elapse before the Provisions of the Penal Code are subjected to that Examination which must precede its Adoption as the Law of the Land. In the meantime we concur in his Lordship's Opinion, that material Advantage may result from calling respectively upon the Judges of the several Supreme and Sudder Courts to report upon particular Parts of the Code, with reference to the Systems of Criminal Law which they have heretofore administered. We conceive, also, that Benefit would accrue in ascertaining whether the Provisions of the Code are clearly expressed for Purposes of practical Utility, if Portions of them were, according to Mr. Shakespear's Suggestion, translated directly from the Original into the vernacular Tongues, without the Intervention of Persian.

We are, &c.

(Signed) J. L. LUSHINGTON.
R. JENKINS.
&c. &c. &c.

No. 29.

EXTRACT LEGISLATIVE LETTER to INDIA, dated 19th August (No. 11.) 1846.

Legislative Letter, dated 27th December (No. 43.) 1845.
(11.) Reference of the Law Commissioners to the Act "of Crimes and Punishments" in the 9th Report of the Commission on the Criminal Law of England.

9. We approve of your having referred for the Consideration of the Law Commission the Remarks on the Provisions of the Penal Code which had been communicated to you from various Quarters, together with the Result of the Labours of the Commissioners on the Criminal Law of England.

No. 30.

COURT OF DIRECTORS to the GOVERNMENT OF INDIA.

(Legislative Department (No. 9.), London, 15th September 1847.)

Our Governor General of India in Council.

Penal Code.

Whole Legislative Letter, 2d December (No. 20.) 1842.
Paragraph 1. Legislative Letter, 20th February (No. 3.) 1847.
Whole Legislative Letter, 22d May (No. 13.) 1847.

Paragraph 1. In the Letters noted in the Margin you have brought to our Notice the Proceedings recently adopted under your Instructions with regard to the Penal Code prepared by the Law Commissioners, and laid before the Government of India in the Year 1837.

2. After we have received the Second Report of the present Law Commissioners, which is mentioned in your Letter of the 22d May (No. 13.) 1847 as being about to be printed, we shall, as soon as may be practicable, communicate

municate to you our Sentiments relative to the Course proper to be pursued with reference to this Subject.

3. In the meantime we approve of your Resolution to furnish Copies of the present Law Commissioners Reports to the Judges of Her Majesty's Supreme Courts at the several Presidences, for their Consideration, as well as to those other Public Officers who have already examined the Provisions of the Penal Code.

4. We also approve of your having instructed the Law Commissioners to direct their early Attention to the Preparation of a Scheme of Pleading and Procedure, with Forms of Indictment, adapted to the Provisions of the Code.

5. We desire further that some Portion of the Code may be carefully translated into One or more of the Native Languages, and that Copies of the Translation may be forwarded to us.

6. The Question of modelling this Code in the Way to admit of its being brought into practical Use has been for some Time under our Consideration, and we hope soon to be able to address you on that important Subject.

We are, &c.

(Signed) H. ST. G. TUCKER.
J. L. LUSHINGTON.
&c. &c.

No. 31.

COURT OF DIRECTORS to the GOVERNMENT OF INDIA.

(Legislative Department, 20th September (No. 20.) 1848.)

Our Governor General of India in Council.

(Extract.)

Penal Code

Whole Legislative Letter, 4th November
(No 31) 1847
Whole Legislative Letter, 7th April (No 17)
1848

Paragraph 1. In our Letter in this Department, dated 15th September 1847, No. 9., we observed as follows, with regard to the Penal Code: "After we have received the Second Report of the present Law Commissioners, which is mentioned in your Letter of the 22d May (No. 13.) 1847 as being about to be printed, we shall, as soon as may be practicable, communicate to you our Sentiments relative to the Course proper to be pursued with reference to this Subject." Having now, with the Letters noted in the Margin, received the Report in question, and also the Translation into the Oordoo Language of Two Chapters of the Penal Code by Mr. H. M. Elliot, and a Scheme of Pleading and Procedure, with Forms of Indictments, adapted to the Provisions of the Code, we proceed to carry into Effect the Intention thus expressed.

2. By the 53d Section of 3d and 4th William IV. Cap. 85., authorizing the Appointment of the Law Commissioners, it was provided that the whole existing System of Jurisprudence, Civil and Criminal, as affecting all Persons whatsoever, with the Judicial Establishments and the Forms of Judicial Procedure, should be revised and reformed.

3. The Law Commission was constituted accordingly; and under Date the 15th of June 1835 the Commissioners were instructed by the Governor General in Council to begin with framing a complete Criminal Code, so that from the Day on which it should be promulgated every other Law whatever relating to Criminal Justice should at once be abolished.

4. In pursuance of these Instructions, the Law Commissioners, on the 2d May 1837, laid before Government the Penal Code, which, in a Report dated 14th October of that Year, they stated had then been printed under their Superintendence, and had been carefully revised and corrected by them while in the Press. In that Report they observed, that though in many Parts of the Penal Code they had referred to the Code of Procedure not then in existence, yet they were of opinion that almost the whole of the Penal Code might be made Law, at least in the Mofussil, without any considerable Change in the existing Rules of Procedure.

5. This Penal Code, which professed only to give an accurate Definition of all Offences, and to allot to each of them the just Measure of Punishment, having been referred by the President in Council to Lord Auckland, the Governor General,

General, at that Time in the North-western Provinces, his Lordship expressed Doubts whether the Time had yet come when a critical Examination of the important and difficult Subject could be properly undertaken by the Government of India. His Lordship accordingly suggested that the Draft should be allowed to circulate for some Months in India and in England, and that the best Authorities at the several Presidencies should be consulted with regard to its Merits.

6. In our Despatch to your Government dated the 6th March 1839 we expressed our entire Approbation of the Course of Proceeding laid down by Lord Auckland, and remarked that after the Penal Code should for some Time have engaged the Attention of Persons conversant with the Subjects of which it treats, the Authorities in India and in England would feel themselves more competent than they then were to form a satisfactory Judgment concerning its general Merits, and to determine what Sort of Scrutiny it ought to undergo before being brought into actual Operation.

7. The next Notice of the Penal Code is found in a Minute recorded by Mr. Amos on the 21st October 1842, a short Time before he retired from his Seat in the Legislative Council. He stated that the Code had been consulted attentively and with Advantage in passing Acts which had Reference to its Provisions; but that Questions of Police, of Criminal Procedure, of Prison Discipline, and of Transportation, were of more practical Importance than a mere Code of Definitions and Punishments.

8. Under Date the 2d December 1842 you transmitted to us such of the Observations by various Officers on the Penal Code as had then reached you, but stated that you were not prepared to take up the Question, whether the Code should, either in whole or in part, be adopted as Law.

9. On the 26th April 1845 it was stated to the Law Commissioners (Mr. Cameron and Mr. Elliott) that the Governor General in Council was desirous that some Step should be taken towards a Revision of the Penal Code, with a view to its Adoption, with such Amendments as might be found necessary, or to its final Disposal otherwise. All the Opinions upon it received from the several Presidencies were accordingly referred to them for Examination, and they were instructed to frame such a Report as might assist the Government in forming a Judgment on the Merits of the Code.

10. The Two Reports of the late Law Commissioners, and the Forms of Procedure adapted to the Penal Code, have been drawn up in pursuance of these Instructions. Although they have not made it their Object to discuss the general Merits of the Code, so much as the detailed Comments on its several Provisions received from a Variety of Quarters, yet the Tenor of their Observations is highly favourable, and they apprehend no Difficulty in adopting the Code as Law. Mr. H. M. Elliot, to whom you are indebted for the Translation of Two Chapters into Oordoo, is also satisfied that the Provisions of the Code admit of being rendered quite intelligible in the Native Languages.

11. Under these Circumstances, we see no Objection to your enacting the Code as Law, if you shall see fit, with such Amendments or Modifications as on full Consideration may appear to you advisable. If, as was originally proposed, all the Laws now in force for the same Purpose are to be simultaneously abolished, it will be essentially necessary that the several Tribunals and Officers of Justice, Native as well as European, are fully prepared to put the Provisions of that Code in practice. It will be for you to deliberate whether there is any Mode by which it might be practicable, in the first instance, to effect the Substitution of the new Code for the present System of Penal Law gradually and experimentally.

12. As it has recently been deemed expedient to authorize the Punishment of *Transportation* for a limited Term, and that of *whipping* in the Case of juvenile Offenders, you will have to consider whether the Provisions of the Code ought not to be modified accordingly. You will also have to consider whether the general Reduction of the Terms of Imprisonment specified in the Code, which its Authors stated they had had in contemplation, would now be advisable.

No. 32.

EXTRACT LEGISLATIVE LETTER to INDIA, dated 27th November (No. 15.) 1850.

2. By your Letter of the 10th of May 1850 (No. 7.), Paragraph 2., we learn that on the Suggestion of the Governor General during his recent Residence at the Seat of Government it has been determined to postpone the further Consideration of the Three Acts above mentioned until a System of Criminal Law shall have been framed for Administration throughout India. With that View you propose to allot at least Four Hours of One Day in every Week to the careful Revision of the Penal Code prepared by the Law Commission, and to refer the Result of your Labours, as they proceed, for the Concurrence of the Governor General.

3. We entirely concur in Lord Dalhousie's Opinion, that before rendering British-born Subjects amenable to the Company's Courts it is essentially necessary to define the Law which those Courts are to administer. This Undertaking is of so great Importance and Difficulty that you cannot proceed with too much Caution; and we think the Course which you have adopted, at the Suggestion of the Governor General, the One best calculated to lead you to a satisfactory Conclusion. When you have completed your Labours we desire that you will communicate the Result to us, with such Suggestions and Observations as you may deem requisite, before you proceed to carry your Views practically into operation.

No. 33.

COURT OF DIRECTORS to the GOVERNMENT OF INDIA.

(Legislative Department, 6th August (No. 11.) 1851).

Our Governor General of India in Council.

By your Letter in this Department, dated the 10th May 1850, we learned that you had entered earnestly upon the Consideration of the Penal Code prepared by the Indian Law Commissioners, a Work which the Marquess of Dalhousie, in his Minute of the 19th April 1850, stated his Belief might at an early Date be brought to a successful Completion. In our Despatch of the 27th November 1850 you were instructed to communicate to us the Result of your Labours on this important Subject; and we are desirous of being informed what Progress has been made in the Revision of the Code.

We are, &c.
(Signed) J. W. Hogg.
&c. &c.

No. 34.

COURT OF DIRECTORS to the GOVERNMENT OF INDIA.

(Legislative Department (No. 2.), London, 4th February 1852.)

Our Governor General of India in Council.

Penal Code. Paragraph 1. With your Letter in this Department, dated the 9th of August 1851 (No. 15.), you transmitted to us the revised Edition of the Penal Code, with Copies of the Minutes recorded by the Governor General and the other Members of the Government on the Subject.

2. We learn that the Code had been referred to the Judges of the Supreme Court of Judicature at Calcutta, and that you had Reason to expect that you would at an early Period be put in possession of their Observations thereupon.

3. You will also have the Benefit of the Learning and Ability of Mr. Baines Peacock, who has proceeded to India to fill the Office of Fourth Member of Council.

4. Adverting, therefore, to the Desire so strongly expressed in the Minute of the Governor General, under Date the 7th of July, that we should "send some
" definite

“ definite Instructions for the Guidance of the Governor General in Council in
 “ legislating fully and at an early Period for the Establishment of some One
 “ Code of Criminal Law in the Territories of the East India Company,” we
 authorize you; if you shall see fit, to proceed to pass a Law for giving
 Effect to the Code, as it may be finally arranged by you, with the Concurrence
 of Mr. Peacock.

5. We request immediate Attention to this important Matter.

We are, &c.

(Signed) JOHN SHEPHERD
 J. W. Hogg.
 &c. &c.

No. 35.

EXTRACT from the PROCEEDINGS of the GOVERNMENT of INDIA in the JUDICIAL
 DEPARTMENT, dated 15th June 1835.

MINUTE by the Honourable T. B. Macaulay.

Calcutta, 14th June 1835.

It is now the Duty of the Council of India to furnish the Law Commissioners
 with Instructions for their Guidance.

In Two or Three Months I hope that we shall have come to a Decision on
 many important Questions which I am about to bring before Council, respecting
 the Administration of Justice in Civil Cases. When those Questions are deter-
 mined, the Law Commissioners will find little Difficulty, now that Mr. Millett
 has done so much towards digesting the existing Regulations, in framing a
 complete Code of Civil Procedure for all Parts of India.

But some Months will probably elapse before the Mass of Materials relating
 to that Subject can be referred to the Law Commission. The present Ques-
 tion is, how, in the Interval, that Body can be most usefully employed?

It appears to me that they cannot at present be more usefully employed than
 in framing a Criminal Code for the whole Indian Empire.

One Reason for beginning with the Criminal Law is, that there is no Depart-
 ment of Law which so early attracted the Attention of Philosophers, or which
 still excites so general an Interest among reflecting and reading Men. It is
 now more than Seventy Years since the famous Treatise “*De Delictis et delictis*
Pene” acquired an European Reputation, and from that Time down to the
 present Day a Succession of Men, eminent as speculative and as practical
 Statesmen, has been engaged in earnest Discussion on the Principles of Penal
 Jurisprudence. There is perhaps no Province of Legislation which has been
 so thoroughly explored in all Directions.

Another Reason for instructing the Law Commission to begin its Labours
 by drawing up a Criminal Code is that Parliament has directed the Govern-
 ment of India to frame, as early as possible, Laws which may prevent European
 Settlers from oppressing the Natives of the Country. We can fulfil the
 judicious and benevolent Injunctions of the Legislature only by making
 Europeans subject, in almost all Criminal Cases, to the Jurisdiction of the
 Mofussil Courts, and it would be highly inexpedient to do this without first
 carefully revising the Constitution of those Courts, the Laws which they
 administer, and the Rules of Procedure which they follow. As we are thus
 under the Necessity of reconsidering our whole System of Penal Jurisprudence,
 and of modifying Parts of it, we had better, I think, make One Labour out
 of Two, and proceed, with the Assistance which Parliament has provided for
 us, to recast the whole.

The Instructions which I would give to the Commissioners are these :—

1. I would instruct them to frame a complete Criminal Code for all Parts of
 the Indian Empire. This Code should not be a mere Digest of existing Usages
 and Regulations, but should comprise all the Reforms which the Commission
 may think desirable. It should be framed on Two great Principles ;—the Prin-
 ciple of suppressing Crime with the smallest possible Infliction of Suffering, and
 the Principle of ascertaining Truth at the smallest possible Cost of Time and
 Money.

2. The Commission ought to be particularly instructed to make this Code *complete*. From the Day when that Code shall be promulgated, every other Law whatever relating to Criminal Jurisprudence ought at once to be abolished. Not only ought everything in the Code to be Law, but nothing that is not in the Code ought to be Law. Whatever Portions, therefore, of the Mahometan Jurisprudence, of the old Regulations, of the Common Law or Statute Law of England, it is intended to retain, ought to be inserted in the Code.

3. The Commission should be instructed to aim at Uniformity as far as is practicable. They should never establish different Definitions of Crime, different Modes of Procedure, or different Measures of Punishment for different Races or different Sects, without a clear and strong Reason for doing so.

4. They should be cautioned against the Use of vague Terms, such as *Treason* and *Manslaughter* in the Law of England, Words which include a great Variety of Offences widely differing from each other. Every Act which it is intended to make criminal ought to be separately defined, nor ought any Indictment to be good which does not follow the Words of some One of the Definitions in the Code, nor ought any Culprit to be convicted whose Act does not come distinctly within that Definition.

5. The Commissioners should be particularly charged to study Conciseness, as far as is consistent with Perspicuity. In general, I believe it will be found that perspicuous and concise Expressions are not only compatible but identical.

6. The Commissioners should be directed to append to the Code Notes assigning their Reasons for all Provisions of which the Reasons are not obvious. If they differ, either as to the Law or as to the Reasons for it, they may write separate Notes. But the Code should be purely imperative, and no argumentative Matter whatever should be introduced into it.

7. Should the Commissioners be divided in any Question, Two to Two, I think that the President must be allowed a Casting Vote. Being myself President, I hardly like to propose this Arrangement. But we must provide in some Way or other for such a Contingency, and no other Mode of providing for it now occurs to me.

(Signed) T. B. MACAULAY.

No. 36.

MINUTE by the Honourable A. Ross.

9th June 1835.

I AGREE with Mr. Macaulay that the Law Commission at present cannot be more usefully employed than in framing a Criminal Code for all Parts of our Indian Empire, and I think that the Instructions proposed by Mr. Macaulay to be given to the Commission for the framing of such a Code are in every respect proper.

(Signed) A. Ross.

No. 37.

EXTRACT MINUTE by the Honourable H. T. Prinsep, dated Calcutta,
11th June 1835.

I HAVE perused in circulation Mr. Macaulay's Minute on the Subject of the Instructions to be given to the Law Commission. It is suggested therein that they shall in the first instance be directed to frame a Criminal Code for the whole Indian Empire, which Code is not to be a mere Digest of existing Laws and Usages, but it is to be framed on the widest general Principles, and to be complete in itself from the Day of Promulgation, and to supersede all other existing Laws, Mahomedan and Hindoo, equally with the Common and Statute Law of England. It is Mr. Macaulay's Object, in proposing to assign this as the First Duty of the Commission, instead of directing their Attention to the Forms of Civil Process and the Jurisdiction of existing Civil Courts, to allow

Time

Time for the Government to consider intermediately the Drafts of consolidated Regulations prepared by Mr. Millett for the Native Courts of the Bengal Presidency, in order that some definite Propositions in respect to this Branch should first be considered and determined by the Legislative Council, when it is hoped that specific Instructions on the Subject may be given to the Law Commission, so as to enable them to prepare, with the Aid of Mr. Millett's Drafts, a general Code of Procedure for all the Civil Courts of India.

Now it occurs to me to remark, in the first place, that if the Law Commission needs to be specially instructed as to the Principles on which the Code of Civil Procedure is to be framed, they will not less need Instruction as to the Principles of the proposed Criminal Code, and that something definite upon this Subject, laying down the Degree in which existing Laws, whether Mahomedan or English, should be made the Basis of the Code, and as to the Forms of Trial applicable both to Europeans and Natives, should first be determined by the Government. The Law Commission will else be left to search out in the dark Mazes of abstract Speculation even the First Principles of Criminal Jurisprudence, and their Time will be lost in discussing Points, the whole Utility of which may be superseded, when, upon Reference afterwards to the Government, it is determined to adopt a different Principle. But I principally object to the Instructions proposed in this Instance for the Law Commission, on the Ground that the Course indicated to them therein is not that prescribed by the Law. The 53d Section of the late Act, under which the Commission has been appointed, specifically provides that they are to *inquire into* existing Laws, &c., &c., and *make Reports* from Time to Time, and to *suggest* such *Alterations* of *Laws*, and of Establishments, Forms of Procedure, &c., as in the course of their *Inquiries* may occur as expedient. The Instructions which the Governor General in Council is to give them relate to these Inquiries and Reports. I do not find that there is any Provision for their being employed at once in framing a Code antecedently to all Inquiry and Report. I gather from the Tenor of the 53d and 54th Sections of the Act, that it was the Intention of the British Legislature to proceed cautiously, and build up, by the Improvement of existing Laws and Institutions, a more perfect Structure than we now possess. I look upon it as contrary to the Spirit and Letter of the Law that the whole of what is now in existence shall first be laid prostrate, in the Idea that a new System, theoretically perfect, can readily and with Ease be established.

Mr. Macaulay's Views, as stated in his Minute on this Subject, imply such a Demolition or rather Supersession of the existing Law of the Three Presidencies. Undoubtedly, all our existing Codes of Criminal Law are very defective, and particularly so in the Want of Rules for restraining and punishing Europeans when they commit Offences in the Interior against one another or against Natives. It is obligatory on the Legislative Council to provide an early Remedy for this specific Defect, and we are entitled, doubtless, to expect Aid from the Law Commission in the Performance of this important Duty. I perfectly agree with Mr. Macaulay as to the Urgency of the Necessity for executing this Task as early as possible, but I think that to connect it with the Formation of an entirely new Criminal Code is not the most expeditious Method we could pursue of supplying the specific Want indicated. Instead of the Instructions recommended by Mr. Macaulay, I would recommend that we adhere as closely as possible to the Terms of the Act, and merely indicate the Subjects proper to be first made the Object of *Inquiry* and *Report*. Amongst these, I would specifically point out the Laws and Forms of Process applicable to Europeans as most urgently calling for Investigation and Amendment; and I would require a separate Report to be submitted on this Subject, with Suggestions as to the Nature of the temporary or permanent Enactments necessary to give Effect to the Intentions of the British Legislature in regard to Europeans and others who have been relieved from the Restraints heretofore imposed on their Residence in the Country, but have not yet been made subject generally to its Laws. The Formation of a Criminal Code, of universal Application to the whole British Dominions in India, and to all Classes of Persons is an Object of ultimate Aim that we may hope some Ten Years hence to see commenced upon. The Instruction to commence it now, with the Ground nowhere prepared, and no previous Comparison made of the different Codes in force in different Parts of India, with no Information collected and embodied in a Shape

to be made the Basis of Determination as to the Principles to be followed in its Preparation, seems to be like attempting to build before we have made the Bricks and collected Materials, and can only end in Loss of Time and Disappointment.

No. 38.

W. H. MACNAGHTEN Esq. to F. MILLET Esq.

(No. 134.)

Sir,

Council Chamber, 15th June 1835.

I AM directed by the Honourable the Governor General of India in Council to request that you will lay before the Members of the Indian Law Commission the following Instructions, pointing out the Subject to which it is the Wish of his Honour in Council that the Attention of the Commission should first be turned, and the Manner in which their Labours should be directed whilst employed thereon.

2. The Commissioners are requested to frame a complete Criminal Code for all Parts of the British Indian Empire, and for every Class of People, of whatsoever Religion or Nation resident within its Limits.

3. The Code which the Commission are requested to prepare for Submission to the Legislative Council ought not merely to be a Digest of existing Laws, Usages, and Regulations; but, whilst it will of course embody all that the Commission may think good in these, it ought to comprise all the Reforms in our Criminal Jurisprudence which the Commission may think desirable. The Code must be in every Way complete, as from the Day on which it shall be promulgated every other Law whatever relating to Criminal Justice will at once be abolished. Not only will everything in the Code be Law, but nothing relating to this Branch of Jurisprudence not in the Code will be Law. Whatever Portions, therefore, of the Mahomedan Law, of the Regulations, of the Statute or of the Common Law of England, it may be proposed to retain in operation, must be inserted in the Code.

4. In preparing the Code there are Two great Principles which it is hoped may never be lost Sight of, and in conformity with which the most minute Details in the Rules of Procedure, as well as the great Provisions of the new Law, ought carefully to be modelled. The first of these is the ascertaining of Truth with the smallest possible Cost of Time and Money, whether to the State or to Individuals; and the second is the suppressing of Crime with the smallest possible Infliction of Suffering, whether to the innocent or the guilty.

5. Uniformity ought to be an Object constantly aimed at by the Commission; an Uniformity as regards Places, and more especially an Uniformity as regards Persons. Different Definitions of Crime, different Modes of Procedure, or different Measures of Punishment, ought never to be established for different Races or Sects of Men, without a clear and strong Reason for doing so; nor ought a peculiar Law to be made applicable to a particular Province or Town without some cogent Motive of Expediency or Necessity.

6. In this Work the Indian Law Commissioners are requested cautiously to abstain from the Use of vague Terms, such, for instance, as *Treason* or *Man-slaughter*, as occurring in the Law of England, Words which include within their legal Meaning a great Variety of Offences, many of which are widely different from each other. Every Act which it is intended to make criminal must be clearly and separately defined, and it must be provided that no Indictment that shall not follow the Words of some One of the Definitions of the Case shall be valid, nor any accused Person convicted whose Act, as proved against him on Trial, shall not come distinctly within the Definition in the Indictment.

7. In drawing up the Provisions of the Code Conciseness ought to be carefully studied, as far as may consist with Perspicuity. It is believed that Perspicuity and matured Conciseness, so far from being incompatible, will in general be found to be identical.

8. The wording of the Code must be simply definitive and imperative, and no argumentative Matter whatever ought to be admitted into it. In submitting the Result of their Inquiries and Deliberations, the Commissioners are

requested

requested to append Notes to the Code which they may propose to have enacted, assigning their Reasons for all Provisions contained in it of which the Reasons may not be obvious. If the Members of the Commission differ amongst each other, either as to the Law proposed or the Reasons for it, they will of course be at liberty to write and append to the Code their separate Notes.

9. If, on any Question, it shall happen that the Opinions of the Members of the Law Commission are divided, Two being in favour of any Proposition and Two against it, the President of the Commission will have a Casting Vote.

I have, &c.
(Signed) W. H. MACNAGHTEN,
Secretary to Government of India in
the Judicial Department.

No. 39.

The INDIAN LAW COMMISSIONERS to the Right Honourable Lord AUCKLAND,
G.C.B., Governor General of India in Council.

(No. 14.)

My Lord,

Calcutta, 2d May 1837.

WE have now the Honour to lay before your Lordship in Council the Penal Code which we have prepared, in conformity with the Orders of Government.

2. The Time which has been employed in executing this Work will not be thought long by any Person who is acquainted with the Nature of the Labour which it requires, with the History of other Works of the same Kind, and with the unfortunate Circumstances which, after having rendered the Commission during a great Part of the last Year almost entirely inefficient, have at length wholly deprived it of the Services of a most valuable Member at the very Time when those Services were most needed.

3. It is hardly necessary for us to entreat your Lordship in Council to examine with Candour the Work which we now submit to you. To the ignorant and inexperienced the Task in which we have been engaged may appear easy and simple; but the Members of the Indian Government are doubtless well aware that it is among the most difficult Tasks in which the Human Mind can be employed; that Persons placed in Circumstances far more favourable than ours have attempted to perform it without Success; that the best Codes extant, if malignantly criticised, will be found to furnish Matter for Censure in every Page; that, in a Work so extensive and complicated, there will inevitably be, in spite of the most anxious Care, some Omissions and some Inconsistencies; and that we have done as much as could reasonably be expected from us, if we have furnished the Government with that which may be improved into a Code.

4. Your Lordship in Council will be prepared to find in this Performance those Defects which must necessarily be found in the First Portion of a Code, even when that Portion is executed by Persons far superior to us in Capacity, Experience, and Learning. Such is the Relation which exists between the different Parts of the Law that no Part can be brought to Perfection while the other Parts remain rude. The Penal Code cannot be clear and explicit while the substantive Civil Law and the Law of Procedure are dark and confused. While the Rights of Individuals and the Powers of public Functionaries are uncertain, it cannot be always certain whether those Rights have been attacked, or whether those Powers have been exceeded.

5. Your Lordship in Council will perceive that the System of Penal Law which we propose is not a Digest of any existing System, and that no existing System has furnished us even with a Groundwork. We trust that your Lordship in Council will not hence infer that in other Parts of our Labours we are likely to recommend unsparing Innovation, and the entire sweeping away of ancient Usages. We are perfectly aware that Legislators ought not to disregard even the Prejudices of those for whom they legislate; and though there are not, of course, the same Objections to Innovation in Penal Legislation which there are to Innovation affecting vested Rights of Property, yet, if we

had found India in possession of a System of Criminal Law which the People regarded with Partiality, we should have been inclined rather to ascertain it, to digest it, and moderately to correct it, than to propose a System fundamentally different. But it appears to us that none of the Systems of Penal Law established in British India has any Claim to our Attention, except what it derives from its own intrinsic Excellence. All those Systems are foreign. All were introduced by Conquerors, differing in Race, Manners, Language, and Religion from the great Mass of the People. The Criminal Law of the Hindoos was long ago superseded, through the greater Part of the Territories now subject to the Company, by that of the Mahometans, and is certainly the last System of Criminal Law which an enlightened and humane Government would be disposed to revive. The Mahometan Criminal Law has, in its Turn, been superseded to a great Extent by the British Regulations. Indeed, in the Territories subject to the Presidency of Bombay the Mahometan Law has been altogether discarded, except in Cases where Mahometans are concerned; and even in such Cases it is absolutely in the Discretion of the Judge whether he will pay any Attention to it. The British Regulations, having been made by Three different Legislatures, contain, as might be expected, very different Provisions. Thus, in Bengal serious Forgeries are punishable with Imprisonment for a Term double of the Term fixed for Perjury. In the Bombay Presidency, on the contrary, Perjury is punishable with Imprisonment for a Term double of the Term fixed for the most aggravated Forgeries. In the Madras Presidency the Two Offences are exactly on the same Footing.

6. In Bengal the purchasing of Regimental Necessaries from Soldiers is not punishable, except at Calcutta, and is there punishable with a Fine of Fifty Rupees. In the Madras Presidency it is punishable with a Fine of Forty Rupees. In the Bombay Presidency it is punishable with Imprisonment for Four Years.

7. The Term of Imprisonment assigned to a Convict who escapes from Custody without using any Violence, in the Bombay Presidency, is double of the Term assigned in Bengal, and in the Madras Presidency, to a Convict who escapes with Violence. On the other hand, the Term of Imprisonment assigned to a Coiner in the Bombay Presidency is little more than Half of what it is in Bengal and the Madras Presidency. The vending of Stamps without a Licence is punishable in Bengal with a moderate Fine; the purchasing of Stamps from a Person not authorized to sell them is not punished at all. In the Madras Presidency the Vender is punished with Imprisonment; but there also the Purchaser is not punished at all. In the Bombay Presidency both Vender and Purchaser are liable to Imprisonment for Five Years, and flogging.

8. Thus widely do the Systems of Penal Law now established in British India differ from each other. Nor can we recommend any One of the Three Systems as furnishing even the Rudiments of a good Code. The Penal Law of Bengal and of the Madras Presidency is in fact Mahometan Law, which has gradually been distorted to such an Extent as to deprive it of all Title to the religious Veneration of Mahometans, yet retaining enough of its original Peculiarities to perplex and encumber the Administration of Justice. In substance it now differs at least as widely from the Mahometan Penal Law as the Penal Law of England differs from the Penal Law of France; yet technical Terms and nice Distinctions, borrowed from the Mahometan Law, are still retained. Nothing is more usual than for the Courts to ask the Law Officers what Punishment the Mahometan Law prescribes in a hypothetical Case, and then to inflict that Punishment on a Person who is not within that hypothetical Case, and who, by the Mahometan Law, would be liable either to a different Punishment, or to no Punishment. We by no means presume to condemn the Policy which led the British Government to retain and gradually to modify the System of Criminal Jurisprudence which it found established in these Provinces; but it is evident that a Body of Law thus formed must, considered merely as a Body of Law, be defective and inconvenient.

9. The Bombay Code is free from this Evil; but we cannot by any means approve of the Manner in which it apportions Punishments to Crimes. Simple Theft, for example, is punishable with Imprisonment for only Six Months, while Embezzlement is punishable with Imprisonment for Seven Years. The damaging of any public Edifice, Well, or Watercourse is punishable with Imprisonment for only Six Months, while the secret destroying of any private Property.

Property, however small, is punishable with Imprisonment for Five Years. Every Conspiracy to injure or impoverish any Person is punishable with Imprisonment for Ten Years; so that a Man who conspires to commit a Theft, and afterwards repents of his criminal Purpose, may be punished with Twenty Times the Imprisonment to which a Man is liable who commits actual Theft. All Assaults which are of such a Nature as to cause a severe Shock to the mental Feelings of the Sufferer are classed with the atrocious Crime of Rape, and punished as severely as Rape. Many important Classes of Offences are altogether unnoticed, and this Omission appears to us to be very ill supplied by One sweeping Clause, which arms the Courts with almost unlimited Power to punish, as they think fit, Offences against Morality, or the Peace or good Order of Society, if those Offences are penal by the religious Law of the Offender. This Clause does not apply to People who profess a Religion with which a System of Law is not connected. A Hindoo, therefore, or a Mahomedan, who is punishable as such, for Adultery, as soon as he declares himself a Christian is at liberty to commit Adultery with Impunity.

10. Such is the State of the Penal Law in the Mofussil. Meanwhile the Population which lives within the local Jurisdiction of the Courts established by the King's Charters is subject to a very artificial System of Criminal Law, which has been imported from a distant Part of the World, which was for the most part framed without the smallest Regard to the Peculiarities of Indian Society, and which, even in the Country for which it was framed, is considered by the great Majority of enlightened Men as requiring extensive Reform.

11. Under these Circumstances we have not thought it desirable to take as the Groundwork of the Code any of the Systems of Law now in force in any Part of India. We have, indeed, to the best of our Ability, compared the Code with all those Systems, and we have taken Suggestions from all, but we have not adopted a single Provision merely because it formed a Part of any of those Systems.

12. We have also compared our Work with the most celebrated Systems of Western Jurisprudence, as far as the very scanty Means of Information which were accessible to us in this Country enabled us to do so. We have derived much valuable Assistance from the French Code, and from the Decisions of the French Courts of Justice on Questions touching the Construction of that Code. We have derived Assistance still more valuable from the Code of Louisiana, prepared by the late Mr. Livingstone. We are the more desirous to acknowledge our Obligations to that eminent Jurist, because we have found ourselves under the Necessity of combating his Opinions on some important Questions. The Reasons for those Provisions which appear to us to require Explanation or Defence will be found appended to the Code in the Form of Notes. Should your Lordship in Council wish for fuller Information as to the Considerations by which we have been guided in framing any Part of the Law, we shall be ready to afford it.

13. The Arrangement which we have adopted is not scrupulously methodical. We have, indeed, attempted to observe Method where we saw no Reason for departing from it; but we have never hesitated about departing from it when we thought that by doing so we should make the Law more simple. We conceived that it would be mere Pedantry to sacrifice the practical Convenience of those who were to study and to administer the Code for the Purpose of preserving minute Accuracy of Classification.

14. Thus some Rules of Construction and some Definitions which might seem from their Nature entitled to a Place in the First Chapter will be found, not in that Chapter, but in the Vicinity of the Penal Clause with which they are most closely connected.

15. In the arranging of the Penal Clauses we have followed the same Course. Thus, though the passing of bad Money is cheating, we have thought it advisable to place it among the Offences relating to the Coin. In the same Manner, though the passing of a forged Note is cheating, we have thought it desirable to place it in the Chapter of Forgery.

16. One Peculiarity in the Manner in which this Code is drawn will immediately strike your Lordship in Council. We mean the copious Use of Illustrations. These Illustrations will, we trust, greatly facilitate the Understanding of the Law, and will at the same Time often serve as a Defence of the Law. In our Definitions we have often found ourselves under the Necessity of sacrific-

ficing Neatness and Perspicuity to Precision, and of using hard and awkward Expressions because we could find no other Expressions which would convey our whole Meaning, and no more than our whole Meaning. Such Definitions standing by themselves would repel and perplex every Reader, and would be fully comprehended only by a few Students after long Application. But we hope that when each of these Definitions is followed by a Collection of Cases falling under it, and of Cases which, though at first Sight they appear to fall under it, do not really fall under it, the Definition, and the Reasons which led to the Adoption of it, will be readily understood. The Illustrations will lead the Mind of the Student through the same Steps by which the Minds of those who framed the Law proceeded, and may sometimes show him that a Phrase which may have struck him as uncouth, or a Distinction which he may have thought idle, was deliberately adopted for the Purpose of including or excluding a large Class of important Cases.

17. There are Two Things which a Legislator should always have in view while he is framing Laws; the one, that they should be, as far as possible, precise; the other, that they should be easily understood. To unite Precision and Simplicity in Definitions intended to include large Classes of Things, and to exclude others very similar to many of those which are included, will often be utterly impossible. Under such Circumstances it is not easy to say what is the best Course.

18. That a Law, and especially a Penal Law, should be drawn in Words which convey no Ideas to the Bulk of the People who are to obey it is an Evil; on the other hand, a loosely-worded Law is no Law; and to whatever Extent a Legislature uses vague Expressions, to that Extent it abdicates its Functions, and resigns the Power of making Law to the Courts of Justice.

19. On the whole, we are inclined to think that the best Course is that which we have adopted. We have, in framing our Definitions, thought only of making them precise, and have never shrunk from rugged or intricate Phraseology when such Phraseology appeared to us to be necessary to Precision. If it appeared to us that our Language was likely to perplex an ordinary Reader, we added as many Illustrations as we thought necessary for the Purpose of explaining it. The Definitions and enacting Clauses contain the Theory of the Law. The Illustrations exhibit the Law in full Action, and show what its Effects will be on the Events of common Life.

20. Thus the Code will be at once a Statute Book and a Collection of decided Cases. The decided Cases in the Code will differ from the decided Cases in the English Law Books in Two most important Points.

21. In the first place, our Illustrations are never intended to supply any Omission in the written Law, nor do they ever, in our Opinion, put a Strain on the written Law; they are merely Instances of the practical Application of the written Law to the Affairs of Mankind. Secondly, they are Cases decided, not by the Judges, but by the Legislature, by those who make the Laws, and who must know more certainly than any Judge can know what the Law is which they mean to make.

22. The Power of construing the Law in Cases in which there is any real Reason to doubt what the Law is amounts to the Power of making the Law. On this Ground the Roman Jurists maintained that the Office of interpreting the Law in doubtful Matters necessarily belonged to the Legislature. The contrary Opinion was censured by Justinian with great Force of Reason, though in Language, perhaps, too bitter and sarcastic for the Gravity of a Code. “*Forum vanam subtilitatem, tam risimus, quam corrigendam esse con-*”
“*suimus si enim in præsentì leges condere soli imperatori concessum est, et*”
“*leges interpretari solo dignum imperio esse oportet. Quis legum anigmata*”
“*solvere, et omnibus aperire idoneus esse videbitur, nisi is cui legislatorem*”
“*esse concessum est? Explosis itaque his ridiculosis ambiguitatibus, tam*”
“*conditor, quam interpres legum solus imperator juste existimabitur.*”

23. The Decisions on particular Cases which we have annexed to the Provisions of the Code resemble the Imperial Rescripts in this, that they proceed from the same Authority from which the Provisions themselves proceed. They differ from the Imperial Rescripts in these most important Circumstances, that they are not made *ex post facto*, and that therefore they cannot be made to serve any particular Turn; that the Persons condemned or absolved by them are purely imaginary Persons, and that therefore, whatever may be thought of the

the Wisdom of any Judgment which we have passed, there can be no Doubt of its Impartiality.

24. The Publication of this Collection of Cases decided by legislative Authority will, we hope, greatly limit the Power which the Courts of Justice possess of putting their own Sense on the Law. But we are sensible that neither this Collection nor any other can be sufficiently extensive to settle every Question which may be raised as to the Construction of the Code. Such Questions will certainly arise, and unless proper Precautions be taken the Decisions on such Questions will accumulate till they form a Body of Law of far greater Bulk than that which has been adopted by the Legislature. We conceive that it is proper for us, at the Time at which we lay before your Lordship in Council the First Part of the Indian Code, to offer such Suggestions as have occurred to us on this important Subject.

25. We do not think it desirable that the Indian Legislature should, like the Roman Emperors, decide doubtful Points of Law which have actually been mooted in Cases pending before the Tribunals. In Criminal Cases with which we are now more immediately concerned, we think that the accused Party ought always to have the Advantage of a Doubt on a Point of Law, if Doubt be entertained by the highest judicial Authority, as well as of a Doubt on a Matter of Fact. In Civil Suits which are actually pending we think it, on the whole, desirable to leave to the Courts the Office of deciding doubtful Questions of Law which have actually arisen in the course of Litigation. But it appears to us that every Case in which a superior Court reverses a Decision of an inferior Court on a Point of Law, every Case in which there is a Division of Opinion in a Court consisting of several Judges on a Point of Law, every Case in which any Judge of any Rank entertains a Doubt on a Point of Law which has arisen in his Court, ought to be reported to the Legislature. If the Law Commission should be a permanent Body, these Cases might with Advantage be referred to it for Examination. In some Cases it will be found that the Law is already sufficiently clear, and that the Misconstruction which has taken place is to be attributed to Weakness, Carelessness, Wrongheadedness, or Corruption on the Part of an Individual, and is not likely to occur again. In such Cases it will be unnecessary to make any Change in the Code. The Executive Government may, if such a Course should be thought advisable, admonish or dismiss the Offender. Sometimes it will be found that a Case has arisen respecting which the Code is silent. In such a Case it will be proper to supply the Omission. Sometimes it will be found that the Words of the Law are not sufficiently precise. In such a Case it will be proper to substitute others. Sometimes it will be found that the Language of the Law, though it is as precise as the Subject admits, is not so clear that a Person of ordinary Intelligence can see its whole Meaning. In such a Case it will generally be expedient to add an Illustration such as may distinctly show in what Sense the Legislature intends the Law to be understood, and may render it impossible that the same Question or any similar Question can ever again occasion Difference of Opinion. In this Manner every successive Edition of the Code will solve all the important Questions as to the Construction of the Code which have arisen since the Appearance of the Edition immediately preceding. Important Questions ought to be settled without Delay, and no Point of Law ought to continue to be a doubtful Point more than Three or Four Years after it has been mooted in a Court of Justice. An Addition of Three or Four Pages to the Code will stand in the Place of several Volumes of Reports, and will be of far more Value than such Reports, inasmuch as the Additions to the Code will proceed from the Legislature, and will be of unquestionable Authority; whereas the Reports would only give the Opinions of the Judges, which other Judges might venture to set aside.

26. We have not inserted in the Code any Clause declaring to what Places and to what Classes of Persons it shall apply. Our Reason for omitting to insert such a Clause is, that we entertain serious Doubts as to the precise Extent of the legislative Authority possessed by your Lordship in Council.

27. It can hardly be supposed that Parliament intended that the Indian Government should, under the new System, have in many respects a legislative Authority less extensive than that which the Government of every Presidency possessed under the old System; and it is certain that, under the old System, the Governments of all the Presidencies passed Regulations which

were held to be binding on the Subjects of the Company beyond the Limits of the Company's Territories, nor was the Legality of this Practice, as far as we are aware, ever disputed. At present the Governments of the Presidencies are deprived of all legislative Power, and the legislative Power given to the Supreme Government is expressly declared to extend to all Persons, Courts, Places, and Things within the Company's Territories, and also to all "Servants of the said Company within the Dominions of Princes and States in alliance with the said Company." This Specification of a particular Class would seem, according to ordinary Rules of Construction, to prove that Parliament did not intend to give to the Governor General in Council the Power of legislating for any Persons not of that particular Class, or for any Person who might be in the Dominion of any Asiatic State not bound by a Treaty of Alliance to the Company.

28. It is in our Opinion most desirable that this Power, a Power which, whether legal or not, was exercised, without ever being questioned, where Natives were concerned, by the Governments of all the Three Presidencies, before the passing of the late Charter Act, should be possessed by the Government of India, and that it should extend not only over Natives but also over British-born Subjects of the King. The Relation between the Company's Government and the Native Government is of quite a different Kind from the Relations which exist between neighbouring States in Europe. The Company's Government exercises such a Power over its subsidiary Allies that it is bound to take thought for the Welfare of the Countries ruled by those Allies. The Inhabitants of Oude and Berar are for many Purposes virtually the Subjects of the British Government, and they have a Right to expect from the British Government the Discharge of many of the Duties of a Sovereign. There were not stronger Reasons for giving to the Council of India the Power of legislating for British-born Subjects within the Company's Territories than for giving to the Council of India the Power of legislating for British Subjects who reside in the Territories of our Allies. Nor is it only with a view to the Protection of the Natives of India that the Government ought to possess this Power. If it is destitute of this Power, if its Penal Laws do not apply to Persons beyond its Frontier, its Subjects may, at Lucknow or at Hyderabad, counterfeit its Coin, forge its Promissory Notes, send forth the most inflammatory Writings among its Troops, corrupt its Servants, and the only Way in which such Criminals could be brought to Punishment would be by employing the Agency of the Native Government, a Course to which there might be the strongest Objections.

29. Indeed if the legislative Power of the Indian Government be thus restricted, it is difficult to say what Course can be taken with respect to Subjects of the Company, who, after committing Crimes in the Dominions of subsidiary Princes, escape into the British Territories. To give up such Persons to Governments which are in the habit of inflicting Punishments shocking to Humanity, and which conduct Trials with little Regard to Justice, would be a Course hardly consistent either with the Duty which Rulers owe to their Subjects, or with the Dignity which it is important that the paramount Power should maintain. Yet if we refuse to give up the Offender, we must surely try and punish him, or we shall give to every neighbouring Power a just Ground for complaining, and even for actual Hostilities.

30. Still greater Inconvenience is to be apprehended from the Restrictions on the legislative Power of your Lordship in Council as respects the High Seas. We find it difficult to believe that Parliament, while giving to the Council of India the Power of making Laws for all Places and Persons within the Territories of the Company, intended that as soon as a Native of those Territories had put off from the Shore in a Fishing Boat he should be at liberty to disobey Laws made by the Council of India; that while everybody at Madras, and everybody at Masulipatam, is bound by the Acts of the Supreme Government, the Crew of a Coasting Vessel bound from Madras to Masulipatam should not be bound by those Acts; that it should be necessary to bring every Native who should commit a petty Offence in a Skiff close to the Coast of Malabar before the Court of Admiralty at Madras, to be there dealt with according to the Rules of the English Criminal Law.

31. It appears to us also, that, unless some Power of legislating for the Indian Seas be possessed by the Indian Government, there will be considerable Difficulty

culty in enforcing Obedience to Rules which are absolutely necessary for the Prevention of Smuggling or of the Communication of infectious Disease. It seems to us, for example, very questionable, whether, as the Law now stands, your Lordship in Council is competent to provide any Punishment for a Captain of a Ship lying off Madras who should refuse to suffer a Custom House Officer to come on board, or to inspect the Cargo, or who should commit the most flagrant Breach of Quarantine Regulations, at a Time when, by doing so, he might endanger the Lives of Hundreds of Thousands.

32. Should your Lordship in Council partake our Doubts as to what your legal Powers are, and agree with us in opinion as to what those Powers ought to be, we would suggest that it would be advisable to bring the Matter with as little Delay as possible to the Notice of the Home Authorities.

33. Your Lordship in Council will see that we have not proposed to except from the Operation of this Code any of the ancient Sovereign Houses of India residing within the Company's Territories. Whether any such Exception ought to be made is a Question which, without a more accurate Knowledge than we possess of existing Treaties, of the Sense in which those Treaties have been understood, of the History of Negotiations, of the Temper and of the Power of particular Families, and of the Feeling of the Body of the People towards those Families, we could not venture to decide. We will only beg Permission most respectfully to observe that every such Exception is an Evil, that it is an Evil that any Man should be above the Law, that it is a still greater Evil that the Public should be taught to regard as a high and enviable Distinction the Privilege of being above the Law, that the longer such Privileges are suffered to last the more difficult it is to take them away, that there can scarcely ever be a fairer Opportunity for taking them away than at the Time when the Government promulgates a new Code binding alike on Persons of different Races and Religions, and that we greatly doubt whether any Consideration, except that of public Faith solemnly pledged, deserves to be weighed against the Advantages of equal Justice.

34. The peculiar State of public Feeling in this Country may render it advisable to frame the Law of Procedure in such a Manner that Families of high Rank may be dispensed, as far as possible, from the Necessity of performing Acts which are here regarded, however unreasonably, as humiliating. But though it may be proper to make wide Distinctions as respects Form, there ought, in our Opinion, to be, as respects Substance, no Distinctions except those which the Government is bound by express Engagements to make. That a Man of Rank should be examined with particular Ceremonies, or in a particular Place, may, in the present State of Indian Society, be highly expedient; but that a Man of any Rank should be allowed to commit Crimes with Impunity must in every State of Society be most pernicious.

35. The Provisions of the Code will be applicable to Offences committed by Soldiers, as well as to Offences committed by other Members of the Community. But for those purely Military Offences which Soldiers only can commit we have made no Provisions. It appears to us desirable that this Part of the Law should be taken up separately, and we have been given to understand that your Lordship in Council has determined that it shall so be taken up.

36. We have only to add, that if your Lordship in Council shall be of opinion that the Code which we have the Honour to submit to Government is One which may furnish the Groundwork of a good System of Penal Law, we would respectfully recommend that it be printed for general Information. Should your Lordship in Council direct it to be printed, we request that we may be permitted to superintend its Progress through the Press, and to make such Amendments as may occur to us during that Progress.

We have, &c.

(Signed)

T. B. MACAULAY.
J. M. MACLEOD,
G. W. ANDERSON.
F. MILLETT.

MINUTE by the Right Honourable the GOVERNOR GENERAL.

20th May 1837.

THE Advantage of having the Draft of the Penal Code speedily printed, after careful Revision by the Law Commissioners, with the view to its being made public for general Information, will be so much greater than could be derived from any Criticism which I can pass upon it that I have only detained it for the Time necessary to enable me to give it a very cursory Reading, and to declare my Assent or my Doubt upon a few of the more important of the Propositions developed by the Commissioners; and whatever I have to say I must say with the more Diffidence as I have been but a desultory Reader of Works on Jurisprudence, and have never fixed in my Mind any but the most general Principles of that Science.

This Code has been framed on the great Principle prescribed in the Charter, for conferring upon India a Body of Law applicable in common to all Classes of its Inhabitants, and it is the first decided Step in a Course of Legislation by which it is intended that a Change so beneficial, from the present Motley and uncertain Practice of the Law, shall be produced in the whole Character and Effects of our Government. Concealing from myself none of the Difficulties and none of the Obstacles which will probably be opposed to us, nor the great Length of Time which must elapse before the Work can be completed, I will not admit that we are to be checked by these Obstacles, or that these Difficulties are insurmountable; and by all the Means in my Power I would speed the Progress of Measures by which the Administration of Justice in India may best be improved, and the Good of its Population in this respect promoted. The Draft before us is indeed but a Fragment of the Work proposed. Less than all the rest will it have to grapple with any of the Prejudices which Caste, Religion, Habit, or Interest may excite against these Changes, and I sincerely wish that in its perfect Success may be marked the Advantage of Clearness, Conciseness, and Uniformity in the Law.

The Code has not been prepared upon a Digest of any System of Law existing in India, and to this Extent the Plan of the Commissioners has deviated from that which was contemplated in their Instructions of the 15th June 1835, but I think that this Deviation is satisfactorily accounted for in their introductory Letter, and it seems that the Code has been compared, not only with the most celebrated Systems of Western Jurisprudence, but with all the Systems of Law in force in India, and that Suggestions have been taken from all.

In reading it I have been disposed highly and very generally, though of course not always without Qualification, to approve the Classification of Crimes and the Apportionment of Punishment, but even upon this there must be, as seems to be admitted by the Commissioners, some Suspension of Judgment, and, with no Law or System of Prison Discipline and Transportation well laid down and enforced, the Approbation cannot be complete.

I am not convinced by the Reasoning of the Commissioners in favour of Preciseness as obtained in some of their more comprehensive Definitions by the Sacrifice of Perspicuity, and I earnestly hope that in the Revision and Amendment which in the Course of printing are promised to the Code some of those Definitions may be simplified, which as at present drawn, and standing by themselves, "would repel and perplex every Reader." The occasional *Strangeness*, if I may use the Expression, of this Part of the Code, has certainly startled me, and I am not reconciled to it either by the Arguments of the Commissioners or by the Illustrations intended to correct it. This Objection, strong as it appears to me, to the Code, will apply with much greater Force to it when it shall be translated, as it must be, for general Information and Instruction, into the Languages of the Country.

I am pleased, however, with the Scheme of Illustration by the Statement of hypothetical Cases; but though the Object is One worthy of the best Efforts of the Government, and though every successive Edition of the Code may be made to solve the important Questions of Construction which may have arisen since the Appearance of the Edition immediately preceding, I am afraid that no Accumulation of such hypothetical Cases will nearly supersede that Power of (ex post facto) Construction which has ever rested with the

the Administrators of the Law ; but the Principle is excellent, of endeavouring to limit in each Case prospectively, as far as may be, this Power in the Judge, by frequent Reference to the Lawgiver.

On the important Subjects discussed in Paragraphs 26. to 32. of the Letters of the Commissioners I would say little more than that I so far agree with them as to be desirous of having them brought with as little Delay as possible to the Notice of the Home Authorities. It has been, as I understand, the Principle of the old Regulations, to make punishable *by Trial within the Company's Territory* Subjects of the Government committing Crimes beyond the Frontier, whether apprehended within or without the Frontier, and it may perhaps be fairly argued that the Right of trying One of its Subjects, found or by any means brought *within its Jurisdiction in its own Courts*, for anything done which the Legislature has declared or may declare to be an Offence, is not impaired by the Charter Act, and the Power of Trial of the Company's Servants, in Foreign Territories may be supposed to have reference to other Tribunals and to another Class of Offences ; but the Doubts which have been stated upon the Construction of the Charter Act in this respect, as well as upon Offences committed at Sea, ought to be cleared up.

I need scarcely add the Statement of my Concurrence in the Principle laid down, that the Penal Law should be made to extend to all Inhabitants of India without Distinction of Rank, though from Treaty, and more perhaps in Form of Procedure than in actual Liability, from inveterate national Feeling, exceptions may more probably be forced upon us here than would be the Case in any other Country.

Having closed these general Remarks upon Topics suggested by the Letter of the Commissioners, I shall not be tempted to enter into Discussion on the particular Provisions of the Draft of Code. I have paused undoubtedly upon the debateable Subjects of making Falsehood rather than gratuitous Malignity the Test of Libel, and of bringing oral Defamation, at the extreme Hazard of vexatious Charges, and of a dangerous Interference with social Intercourse, within the Pale of the Penal Law ; but our Consideration of all Questions of this Nature must be reserved for a future Day.

I have only further to propose, that Authority be communicated to the Commissioners to have the Code printed under their Superintendence, they making such Amendments in the Course of printing as may seem to be necessary, and that such Remarks upon the Points submitted in their Letter may be made to them as, upon a Perusal of these Observations, the Council may judge requisite. With the Code will of course be also printed the Appendix of explanatory Notes, which contain Discussions most interesting and useful to those who take part in these Inquiries, and which furnish, it appears to me, a Fund of very instructive Matter for Reflection to all Indian Statesmen.

When the printed Code is laid before us, I will suggest the Course which may then appear to me to be the most advisable for its accurate and systematic Examination.

(Signed) AUCKLAND.

No. 41.

W. H. MACNAGHTEN Esq. to J. P. GRANT Esq.

(Legislative, No. 182.)

Sir,

Council Chamber, 5th June 1837.

I AM directed by the Right Honourable the Governor General in Council to acknowledge the Receipt of a Letter from the Indian Law Commissioners dated the 2d ultimo, together with the Penal Code which accompanied it.

2. In the concluding Paragraph of their Letter the Commissioners have submitted the following Suggestion :

“ We have only to add, that if your Lordship in Council shall be of opinion
“ that the Code which we have the Honour to submit to Government is One
“ which may furnish the Groundwork of a System of Penal Law, we would
“ respectfully recommend that it be printed for general Information. Should
“ your Lordship in Council direct it to be printed, we request that we may be
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“ permitted to superintend its Progress through the Press, and to make such Amendments as may occur to us during that Progress.” His Lordship in Council approves this Suggestion, and in the present Stage of the Commissioners Labours he will not detain the Code to enter into a minute Examination of its Provisions; for, independently of the Delay which would thereby be occasioned, it is probable that such Alterations may be made in the Course of printing as to render inapplicable any Remarks which might now be made by his Lordship in Council.

3. The Perusal which his Lordship in Council has been able to afford to this important and interesting Work has been of too cursory a Nature to admit of his forming any accurate Opinion of its Merits. His Lordship in Council is disposed, highly and very generally, though of course not always without Qualification, to approve the Classification of Crimes and the Apportionment of Punishments laid down in the Code; while, on the other hand, notwithstanding the reasoning of the Commissioners in favour of Preciseness, he doubts whether the great Object of Perspicuity has not in some of the more comprehensive Definitions been too much sacrificed, and whether this Defect will in all Cases be supplied by the accompanying Illustrations. He cannot but fear that it will be felt with peculiar Force when a Translation of the Code shall be made into the Languages of the Country.

4. The Commissioners, in the Sixteenth Paragraph of their Letter, seem to admit the startling Effect which Definitions so imperfectly conveying their Meaning must have upon the general Reader, and it would, in the Judgment of his Lordship in Council, conciliate general Opinion, as well as be satisfactory to him, if in the Revision which is promised to the Code it should be found possible, without the Sacrifice of Precision, to introduce some Amendment in this respect.

5. The important Subjects discussed in Paragraphs 26 to 32 of the Letter now acknowledged his Lordship in Council agrees with the Commissioners in thinking should be brought to the Notice of the Home Authorities with as little Delay as possible.

6. With regard to the Trial within the Company's Territory of Subjects of the British Government for Crimes committed beyond the Frontier, it may perhaps be fairly argued that the Provisions of previously existing Regulations are not impaired by the Charter Act; but the Doubts which have been stated upon the Construction of the Charter Act in this respect, as well as with regard to Offences committed at Sea, ought to be cleared up, and with this view a Reference will immediately be made to the Honourable the Court of Directors.

7 His Lordship in Council fully concurs in the Principle advocated by the Commissioners to the Effect that the Penal Law should extend to all Inhabitants of India, without Distinction of Rank, though from Treaty, and more perhaps in Form of Procedure than in actual Liability, Exceptions will no doubt be found more necessary in this than in any other Country.

8 The Commissioners should distinctly understand that the Governor General in Council by no means intends to indicate his Concurrence in all the Provisions which they have submitted for the Adoption of the Legislature. A very hasty Inspection of the Code has sufficed to show his Lordship in Council that it contains some debateable Points to which he should be unwilling to pledge himself without more mature Deliberation, but for the Discussion of which he does not at present possess sufficient Leisure. When the printed Code is laid before him his Lordship in Council will be prepared to suggest the Course which may then appear to him to be the most advisable for its accurate and systematic Examination.

9. The Code is herewith returned to you, in order that it may be printed, under the Superintendence of the Commissioners, and the Appendix of explanatory Notes should be printed with it, containing, as those Notes do, Discussions most interesting and useful to those who take part in such Inquiries as the present. Should the Commissioners deem it necessary, their Letter, now under Acknowledgment, may also be printed, but in that Case his Lordship in Council is of opinion that any Language (especially in the Fifth Paragraph) which may seem to bear the Character of a harsh Commentary upon Hindoo or Mahomedan Systems of Law, and may therefore be likely to give Offence, should be softened,

10. With regard to the future Labours of the Commissioners, his Lordship in Council is of opinion that Provisions for the Law of Procedure, both Civil and Criminal, are, under present Circumstances, more urgently required than any other. But as these Provisions will probably involve Considerations of Expense, to be determined upon by the Executive Government, the Commissioners are requested, previously to the Preparation of detailed Rules, to submit an Outline of the System which they would propose to introduce, for the Consideration of the Governor General in Council. This Task will not, his Lordship in Council trusts, materially interfere with the Transmission of Replies to miscellaneous References (some of long standing) which have been made from Time to Time by Government for the Opinion of the Commissioners.

I have, &c.

(Signed) W. H. MACNAGHTEN,
Secretary to the Government of India.

No. 42.

J. P. GRANT Esq. to R. D. MANGLES Esq.

(No. 84.)

Sir,

Indian Law Commission, 30th December 1837.

I AM directed by the Indian Law Commissioners, with reference to Mr. Secretary Macnaghten's Letter to my Address, dated the 5th of June 1837, No. 182., to request that you will inform the Honourable the President in Council, that the Penal Code originally submitted by the Commissioners with their Letter of the 2d of May last, after having undergone a careful Revision, has now been printed, with the Notes, and that several of the Copies are already fit for Distribution.

2. Twelve hundred Copies of the Work have been printed. The Commissioners think that, if permitted by the Government of India, they can dispose of Two hundred of these at home and in India with public Advantage. They imagine that the remaining One thousand Copies, if distributed to the Three local Governments, will be sufficient to allow One Copy to be sent for Consideration and Remark to every Judge of the Supreme Courts, every Sudder, Provincial, and Zillah Judge, every Commissioner, Magistrate, and independent Joint Magistrate, every Member of a Board, and every Collector concerned in the Collection of Revenue of any Description, and every Officer of any other Denomination who possesses the Powers of any of the above Functionaries under a different Name. The Commissioners also think that a sufficient Number will remain for Distribution amongst the Members of the Council of India and the local Governments and their principal Officers, and such other Persons as any Government may desire to consult, as well as for public Sale at each Presidency for the Use of such private Persons as may desire to remark upon the Work. The Commissioners presume that the Government will not object to any Reprint of the Work which may be undertaken by any private Person.

3. If this Scheme of Distribution be approved of by the Government, the Commissioners will transmit to your Office One thousand Copies, retaining in their own Office Two hundred Copies. They will at the same Time submit an Account of the Expense of Publication, whence the Price of each Copy to be offered for Sale may be determined.

I have, &c.

(Signed) J. P. GRANT, Officiating Secretary.

No. 43.

R. D. MANGLES Esq. to J. P. GRANT Esq.
(Legislative Department, No. 9.)

Sir,

Council Chamber, 5th January 1838.

I AM directed by the Honourable the President in Council to acknowledge the Receipt of your Letter No. 84., dated the 30th ult., and to request that you will communicate to the Indian Law Commissioners the Sanction generally of his Honour in Council to their Propositions for the Distribution of the printed Copies of the Penal Code now ready.

I am, &c.

(Signed) R. D. MANGLES,
Officiating Secretary to the Government of India.

No. 44.

W. H. MACNAGHTEN Esq. to R. D. MANGLES Esq.
(Legislative Department.)

Sir,

Head Quarters, Camp Meerut, 12th February 1838.

I AM desired by the Right Honourable the Governor General of India to acknowledge the Receipt of your Letter No. 8., dated the 11th ultimo, transmitting Six Copies of the Draft of Penal Code, and Copy of a Despatch to the Honourable the Court of Directors, No. 1. of 1838, in which it is stated that the important Subject of this Draft will come under immediate Consideration ; and in reply to state, that his Lordship will hope to be furnished with the Result of the Deliberations of the President in Council previously to its being communicated to the Honourable Court.

2. It does not, however, fully appear whether it is intended that these Deliberations should have reference to the Code itself, or to the Course of Proceeding which should be in the first instance adopted in regard to it ; and his Lordship has great Doubts whether the Time is yet come when a critical Examination of this important and difficult Subject could be properly undertaken by the Government of India. With regard to the Course of Proceeding to be followed by the Government, it has been in his Contemplation that the Draft should be allowed to circulate for some Months here and in England, and that previously to its being in any degree adopted by the Legislative Council, the Matters to which Attention shall have been particularly directed should be considered by the Government, and sent, with an Expression of its Opinion, for further Discussion by the Law Commission.

3. Where such Reference shall have Relation to the great Principles of Jurisprudence, it seems probable that in some Instances Instructions for the Guidance of the Council will have been received from the Honourable Court, and in others, bearing more directly upon Indian Feelings and Indian Opinions, there will be Means of Communication with the best Authorities of this and the other Presidences, and Advantage will be derived from that general Discussion and Criticism, which, due Allowance being made for its Inequality, its Flippancy, and its Prejudice, may yet be occasionally of no light Value.

4. Upon the latter of these Points his Lordship will throw it out for the Consideration of the President in Council whether a Reference might not well be made to the several Supreme and Sudder Courts of India upon the Subject of the Code. Regarding it as a whole, the Judges of these Courts might be invited, without entering into Minuteness of Criticism, to express their Opinion upon its general Principles and Arrangement. They would state whether their Attention has been prominently drawn to any Points in which the Code seems to them to be either wanting or excessive, and how far the more material Provisions for the Protection of Persons and of Property, for the Definition of Crime and the Apportionment of Punishment, are to be reconciled with Principles in themselves sound, or with the Rules of Law as understood and valued by the Individuals, of whatever Class, who will be subject to its Operation. The Judges of each Court might also, it occurs to his Lordship, be with Advantage requested to undertake a more particular Examination of some distinct

distinct 'Chapters' of the Code, and to report their Views (keeping in mind especially the Systems of Law at present administered by them respectively) of the Omissions and Defects of these Portions of the Work.

5. If, however, beyond this, the President in Council should be of opinion that a more early Consideration by the Government of the Code in detail is desirable, his Lordship would willingly give his best Attention to any Proposal made with this View.

I have, &c.
(Signed) W. H. MACNAGHTEN,
Secretary to the Government of India
with the Governor General.

No. 45.

R. D. MANGLES Esq. to H. CHAMIER Esq.
(Legislative Department, No. 88.)

Sir,

Fort William, 12th February 1838.

I AM directed by the Honourable the President in Council to forward to you, in order to their being laid before the Right Honourable the Governor of Fort St. George in Council, 150 Copies of a (proposed) Penal Code prepared by the Indian Law Commissioners, and to request that the Work may receive the Consideration of the Right Honourable the Governor in Council, and that the Copies now supplied may be distributed in such a Manner as may tend, in his Judgment, to the most useful Results.

2. The Legislative Council will thankfully receive any Remarks upon the Code, and all Information upon Subjects connected with it, that may be offered either by Public Officers or by Individuals, from a Desire to render it as complete and free from Faults as possible.

3. The President in Council is of opinion that the Court of Sudder Foujdary Adawlut should be required to collect and digest the Opinions of those Members of the Public Service, whether subordinate to them or otherwise, whom they may deem qualified to afford valuable Information upon any of the important Subjects to which the Code relates, to point out Defects, or to suggest Improvements; and that they should hand up the Returns that they may receive to their Requisitions, with a Report of their own Opinions, through the local Government, for the Consideration of the Legislative Council.

4. His Honour in Council requests that the Right Honourable the Governor in Council will favour him with his Opinion as to the Native Language or Languages into which the proposed Code ought to be immediately translated, with a view to its Distribution to the most intelligent Members of the Native Community under your Presidency, and will inform him as to the Means available for the prompt and satisfactory Execution of the Work of Translation, manifestly requiring much both of Ability and Care.

I have, &c.
(Signed) R. D. MANGLES,
Officiating Secretary to the Government of India.

No. 46.

R. D. MANGLES Esq. to W. H. WATHEN Esq.
(Legislative Department, No. 103.)

Sir,

Fort William, 12th February 1838.

I AM directed by the Honourable the President in Council to forward to you, in order to their being laid before the Right Honourable the Governor of Bombay in Council, 100 Copies of a (proposed) Penal Code prepared by the Indian Law Commissioners, and to request that the Work may receive the Consideration of the Right Honourable the Governor in Council, and that the Copies now supplied may be distributed in such a Manner as may tend, in his Judgment, to the most useful Results.

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2. The Legislative Council will thankfully receive any Remarks upon the Code, and all Information upon Subjects connected with it, that may be offered either by Public Officers or by Individuals, from a Desire to render it as complete and free from Faults as possible.

3. The President in Council is of opinion that the Court of Sudder Foujdary Adawlut should be required to collect and digest the Opinions of those Members of the Public Service, whether subordinate to them or otherwise, whom they may deem qualified to afford valuable Information upon any of the important Subjects to which the Code relates, to point out Defects, or to suggest Improvements; and that they should hand up the Returns that they may receive to their Requisitions, with a Report of their own Opinions, through the local Government, for the Consideration of the Legislative Council.

4. His Honour in Council requests that the Right Honourable the Governor in Council will favour him with his Opinion as to the Native Language or Languages into which the proposed Code ought to be immediately translated, with a view to its Distribution to the most intelligent Members of the Native Community under your Presidency, and will inform him as to the Means available for the prompt and satisfactory Execution of the Work of Translation, manifestly requiring much both of Ability and Care.

I have, &c.

(Signed) R. D. MANGLES,
Officiating Secretary to the Government of India.

No. 47.

R. D. MANGLES Esq. to F. J. HALLIDAY Esq.

(Legislative Department, No. 48.)

Sir,

Fort William, 12th February 1838.

I AM directed by the Honourable the President in Council to forward to you, in order to their being laid before the Honourable the Deputy Governor of Bengal, 200 Copies of a (proposed) Penal Code prepared by the Indian Law Commissioners, and to request that the Copies now supplied may be distributed in such a Manner as may tend, in his Honour's Judgment, to the most useful Results.

2. The Legislative Council will thankfully receive any Remarks upon the Code, and all Information upon Subjects connected with it, that may be offered either by Public Officers or by Individuals, from a Desire to render it as complete and free from Faults as possible.

3. The President in Council is of opinion that the Court of Sudder Nizamut Adawlut should be required to collect and digest the Opinions of those Members of the Public Service, whether subordinate to them or otherwise, whom they may deem qualified to afford valuable Information upon any of the important Subjects to which the Code relates, to point out Defects, or to suggest Improvements; and that they should hand up the Returns that they may receive to their Requisitions, with a Report of their own Opinions, through the local Government, for the Consideration of the Legislative Council.

I have, &c.

(Signed) R. D. MANGLES,
Officiating Secretary to the Government of India.

No. 48.

R. D. MANGLES Esq. to J. THOMASON Esq.

(Legislative Department, No. 68.)

Sir,

Fort William, 12th February 1838.

I AM directed by the Honourable the President in Council to forward to you, in order to their being laid before the Right Honourable the Governor General of India, 150 Copies of a (proposed) Penal Code prepared by the Indian Law Commissioners, and to request that the Copies now supplied may be

be distributed in such a Manner as may tend, in his Lordship's Judgment, to the most useful Results.

2. The Legislative Council will thankfully receive any Remarks upon the Code, and all Information upon Subjects connected with it, that may be offered either by Public Officers or by Individuals, from a Desire to render it as complete and free from Faults as possible.

3. The President in Council is of opinion that the Court of Sudder Nizamut Adawlut should be required to collect and digest the Opinions of those Members of the Public Service, whether subordinate to them or otherwise, whom they may deem qualified to afford valuable Information upon any of the important Subjects to which the Code relates, to point out Defects, or to suggest Improvements; and that they should hand up the Returns that they may receive to their Requisitions, with a Report of their own Opinions, through the local Government, for the Consideration of the Legislative Council.

I have, &c.

(Signed) R. D. MANGLES,

Officiating Secretary to the Government of India.

No 19.

The GOVERNMENT OF INDIA to each of the JUDGES of the SUPREME COURTS of BENGAL (Nos. 41. and 42.), MADRAS (Nos. 58., 59., and 60.), and BOMBAY (Nos. 56. and 57.), and to the RECORDER of PENANG.

(Legislative Department).

Honourable Sir,

Fort William, 12th February 1838.

IN forwarding for your Consideration the accompanying Copy of a (proposed) Penal Code, prepared by the Indian Law Commissioners, we earnestly request that we may be favoured with such Observations upon its Provisions, and such Suggestions for supplying any Defects that may be found in it, as may be dictated by your intimate Acquaintance with the important Subjects to which the Work relates.

We have, &c.

(Signed) A. ROSS.
W. MORISON.
W. SHAKESPEAR.
C. H. CAMERON.

No. 50.

R. D. MANGLES Esq. to the ADVOCATE GENERALS, the STANDING COUNSELS, and the COMPANY'S ATTORNEYS at each of the Three Presidencies.

(Legislative Department).

Sir,

Fort William, 12th February 1838.

IN forwarding for your Consideration the accompanying Copy of a (proposed) Penal Code prepared by the Indian Law Commissioners, the Honourable the President in Council *earnestly* requests that he may be favoured with such Observations upon its Provisions, and such Suggestions for supplying any Defects that may be found in it, as may be dictated by your *intimate* Acquaintance with the important Subjects to which the Work relates.

Words in italics to be omitted in the Letters to the Company's Attorneys.

I have, &c.

(Signed) R. D. MANGLES,

Officiating Secretary to the Government of India.

No. 51.

R. D. MANGLES Esq. to Sir CHARLES METCALFE, Bart., G.C.B.

(Legislative Department, No. 30.)

Honourable Sir,

Fort William, 12th February 1838.

I AM directed by the Honourable the President in Council to forward, for your Information, and for any Observations with which you may be disposed to favour the Government, a Copy of the proposed Penal Code submitted by the Indian Law Commissioners.

I have, &c.

(Signed)

R. D. MANGLES,

Officiating Secretary to the Government of India.

No. 52.

R. D. MANGLES Esq. to W. H. MACNAGHTEN Esq.

(Legislative Department, No. 176.)

Sir,

Fort William, 26th February 1838.

I AM directed to acknowledge the Receipt of your Letter dated the 12th instant, and to request that you will inform the Right Honourable the Governor General of India, in reply, that it was by no means the Intention of the Honourable the President in Council to intimate by the Letter to the Honourable Court of Directors to which his Lordship refers any Intention on the Part of the Legislative Council to enter instantly, or without a previous careful Collection and Collation of the Opinions of all Public Bodies and Individuals qualified to afford useful Information upon the Subject, on a Discussion of the Draft of a proposed Penal Code submitted by the Indian Law Commission.

2. My Letter of the 12th instant to the Address of Mr. Officiating Secretary Thomason (Communications corresponding with which, with suitable Additions, especially in the Two first-mentioned Instances, that quoted on the

* His Honour in Council requires that the "Right Honourable the Governor in Council" will favour him with his Opinion as to the "Native Language or Languages into which the proposed Code ought to be immediately translated, with a view to its Distribution to the most intelligent Members of the Native Community under your Presidency, and will inform him as to the Means available for the prompt and satisfactory Execution of the Work of Translation, manifestly requiring much both of Ability and Care."

Margin*, have been made to the Governors in Council of Madras and Bombay, and to the Deputy Governor of Bengal,) will have apprized his Lordship in some measure of the preliminary Steps which his Honour in Council has deemed it proper to take, in order to obtain Possession of some of the Materials upon which

his Deliberations on the proposed Code might eventually be founded. Her Majesty's Judges and the Law Officers of the Company at each Presidency, as well as the Recorder in the Straits, have been severally addressed to the same Purport. A Copy of the Letter written by the Board to the several Judges is appended, for his Lordship's Perusal.

3. From the foregoing Explanation the Right Honourable the Governor General will perceive that the Sentiments of his Honour in Council with respect to the Manner in which the Discussion of the proposed Penal Code should be entered upon accord in the main with those expressed in your Letter under Reply. The Assurance given to the Honourable Court only intended to imply that the important Subject of that Code would command the earnest Attention of the Legislative Council, and that the Result of their Deliberations on it would be duly communicated to the Authorities in England, the President in Council never having contemplated such an Undertaking as the Examination of the whole of the vast Field over which the Work of the Law Commission extends without previously calling in the Aid of the best

* Note.—His Honour in Council has now under Consideration the Measures proper to be taken for the immediate Translation of the proposed Code into the Languages most generally current on this Side of India.

informed Minds in India, both European and Native.* The Time which the Collection of Information from these Sources will occupy will enable the Honourable Court to furnish the Legislative Council, as his Lordship has anticipated, with Instructions upon such

Points of Discussion as "have Relation to the great Principles of Jurisprudence," and will likewise allow full Scope for the general Expression of Public

Public Opinion through the Medium of the Press, or by direct Communications to Government.

4. Having thus placed his Lordship in possession both of the general Views of the Legislative Council and of the Steps that have been actually taken to carry them into effect, I am directed to request that he will favour the President in Council with his Opinion, whether, with reference to Paragraph 4. of your Letter, any more particular Means should be used to elicit the Sentiments of any Public Authorities, either generally, or, as suggested by the Governor General, by requesting "the Judges of each Court to undertake a more particular Examination of some distinct Chapters of the Code."

I have, &c.

(Signed) R. D. MANGLES,
Officiating Secretary to the Government of India.

No. 53.

W. H. MACNAGHTEN Esq. to R. D. MANGLES Esq.

(Legislative.)

Sir,

Simla, 13th April 1839.

I AM desired to acknowledge the Receipt of your Letter, No. 176, dated the 26th February last, with its Enclosure; and with reference to the Fourth Paragraph of that Communication, to state that the Right Honourable the Governor General is of opinion that it will be expedient to consult the Judges of the Sudder Courts at each of the Presidencies and at Allahabad on the Provisions of the Code; and they should be particularly requested to state their Opinion, not only as to whether Provision is made in the Code for the different Offences which are prevalent in India, but also as to the Necessity of the proposed Enactments, and the Adaptation of the proposed Penalties with reference to all the Circumstances of the Country, and to the Habits and Feelings of the large and various Population which will be affected by them.

2. With regard to the Mode of delivering their Opinion, his Lordship thinks that it may with Propriety be left to each Court to determine whether their Opinion should be pronounced on the entire Code, or whether some separate Chapters should also more particularly be reported on. To his Lordship it appears that the accurate and close Examination of some distinct Chapters must be considered nearly indispensable to the Formation of a satisfactory Judgment on the Work.

I have, &c.

(Signed) W. H. MACNAGHTEN,
Secretary to the Government of India
with the Governor General.

No. 54.

R. D. MANGLES Esq. to F. J. HALLIDAY Esq.

(Legislative Department, No. 154.)

Sir,

Council Chamber, 7th May 1838.

IN continuation of my Letter No. 48., dated the 12th February last, I am directed by the Honourable the President in Council to request that the Honourable the Deputy Governor will be pleased to cause a Copy of the accompanying Communication, received from the Secretary to the Government of India with the Right Honourable the Governor General, under Date the 13th ultimo, to be forwarded to the Sudder Court at this Presidency, for their Information and Guidance in their Examination of the proposed Criminal Code.

I have, &c.

(Signed) R. D. MANGLES,
Officiating Secretary to the Government of India.

No. 55.

R. D. MANGLES Esq. to H. CHAMIER Esq.

(Legislative Department, No. 319.)

Sir,

Fort William, 7th May 1838.

IN continuation of my Letter No. 88., dated the 12th February last, I am directed by the Honourable the President in Council to request that the Right Honourable the Governor in Council will be pleased to cause a Copy of the accompanying Communication, received from the Secretary to the Government of India with the Right Honourable the Governor General, under Date the 13th ultimo, to be forwarded to the Sudder Court at Fort St. George, for their Information and Guidance in their Examination of the proposed Criminal Code.

I have, &c.

(Signed) R. D. MANGLES,

Officiating Secretary to the Government of India.

No. 56.

R. D. MANGLES Esq. to L. R. REID Esq.

(Legislative Department, No. 320.)

Sir,

Fort William, 7th May 1838.

IN continuation of my Letter No. 103., dated the 12th February last, I am directed by the Honourable the President in Council to request that the Right Honourable the Governor in Council will be pleased to cause a Copy of the accompanying Communication, received from the Secretary to the Government of India with the Right Honourable the Governor General, under Date the 13th ultimo, to be forwarded to the Sudder Court at Bombay, for their Information and Guidance in their Examination of the proposed Criminal Code.

I have, &c.

(Signed) R. D. MANGLES,

Officiating Secretary to the Government of India.

No. 57.

R. D. MANGLES Esq. to J. THOMASON Esq.

(Legislative Department, No. 321.)

Sir,

Fort William, 7th May 1838.

IN continuation of my Letter No. 68., dated the 12th February last, I am directed by the Honourable the President in Council to request that the Right Honourable the Governor General in charge of the N. W. Provinces will be pleased to cause a Copy of the accompanying Communication, received from the Secretary to the Government of India with the Right Honourable the Governor General, under Date the 13th ultimo, to be forwarded to the Sudder Court at Allahabad, for their Information and Guidance in their Examination of the proposed Criminal Code.

I have, &c.

(Signed) R. D. MANGLES,

Officiating Secretary to the Government of India.

No. 58.

The MEMBERS of the INDIAN LAW COMMISSION to the Honourable the
PRESIDENT IN COUNCIL OF INDIA.

(Legislative.)

Honourable Sir,

Indian Law Commission, 28d February 1838.

WITH reference to the 10th Paragraph of Mr. Macnaghten's Letter to our Secretary, dated the 5th June 1837, we have the Honour to inform your Honour
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in Council, that, according to the Instructions contained in that Paragraph, we are now entering upon the Preparation of an Outline of such a System of Civil and Criminal Procedure as in the actual State of our Information may appear to us best adapted to the whole or to the various Parts of the Territories of the East India Company.

2. In announcing, however, that we are about to be so engaged, we feel it incumbent upon us to observe, that if we were called upon to prepare a Code of Civil and Criminal Procedure we shall have no Hesitation in saying that before such a Task could be accomplished it would be necessary for us, or some of us, to visit the Territories subject to all the Indian Presidencies, for the Purpose of instituting Inquiries of a Nature too minute to be effectually carried on elsewhere than in the Neighbourhood to which they relate, and that even with respect to such an Outline as will enable your Honour in Council to judge at what Cost a Code formed by filling up its Details could be kept in operation, it will be impossible to foresee with Certainty how far the Provisions which we may recommend in such an Outline, if drawn up by us without moving from Calcutta, may bear the Test of that local Inquiry which, as we have just said, must in our Opinion precede the Completion of the Code.

3. A good many of the miscellaneous References alluded to in the 10th Paragraph of Mr. Secretary Macnaghten's Letter of the 5th of June 1837 have since been replied to separately; a very few still remain for special Consideration; and the Remainder, which appear to us to relate to Subjects that will be best considered in connexion with general Codes of Civil Law or Civil or Criminal Procedure, will be noticed shortly in One general Communication to your Honourable Board.

We have, &c.
(Signed) C. H. CAMERON.
F. MILLETT.
J. YOUNG.

No. 59.

R. D. MANGLES Esq. to W. H. MACNAGHTEN Esq.
Legislative Department (No. 182.)

Sir,

Fort William, 5th March 1838.

I AM directed to request that you will lay the accompanying Copy of a Letter from the Indian Law Commissioners, dated the 23d ultimo, before the Right Honourable the Governor General of India, and solicit an Expression of his Sentiments thereon, informing his Lordship, at the same Time, that, notwithstanding the possible Drawback on the Value of the Information called for, pointed out by the Commissioners, the Honourable the President in Council is of opinion that they should be instructed to proceed in the Preparation of an Outline of such a System of Civil and Criminal Procedure as in the actual State of their Information may appear to them best adapted to the whole or to the various Parts of the Territories of the East India Company.

I have, &c.
(Signed) R. D. MANGLES,
Officiating Secretary to the Government of India.

No. 60.

W. H. MACNAGHTEN Esq. to R. D. MANGLES Esq.
(Legislative Department.)

Sir,

Camp at Mahun, 26th March 1838.

I AM directed by the Right Honourable the Governor General of India to acknowledge the Receipt of your Letter dated the 5th instant, submitting Copy of a Letter from the Law Commissioners dated the 23d ultimo, and soliciting the Sentiments of the Governor General on the Preparation of an Outline of such a System of Civil and Criminal Procedure as may appear best adapted to the whole or various Parts of the Territories of the East India Company.

2. In reply I am desired to observe, that the Governor General concurs in the Opinion expressed on this Occasion by the Honourable the President in Council, and his Lordship is of opinion that, at least in the present State of the Commission, it would not be desirable that they should quit the Presidency or separate. The Preparation of the Code may go on according to the actual State of the Information possessed by the Commissioners. If deemed necessary, previously to the Completion of the Code, the several Districts of the Country may be visited by the Commissioners, either collectively or individually, as may seem most expedient.

I have, &c.
(Signed) W. H. MACNAGHTEN,
Secretary to the Government of India
with the Governor General.

No. 61.

R. D. MANGLES Esq. to C. H. CAMERON, F. MILLETT, and J. YOUNG, Esquires.
(Legislative Department, No. 135.)

Gentlemen,

Council Chamber, 16th April 1838.

I AM directed to acknowledge the Receipt of your Letter dated the 23d of February last, and to inform you, in reply, that the Honourable the President in Council is of opinion, after consulting the Right Honourable the Governor General upon the Subject, that in the present State of the Commission it would not be desirable that you should quit the Presidency or separate, and consequently that you should proceed in the Preparation of an Outline of such a System of Civil and Criminal Procedure, as in the actual State of your Information may appear to you best adapted to the whole or the various Parts of the Territories of the East India Company.

I have, &c.
(Signed) R. D. MANGLES,
Officiating Secretary to the Government of India.

No. 62.

EXTRACT from the PROCEEDINGS of the Honourable the PRESIDENT OF THE COUNCIL OF INDIA in Council, in the Legislative Department, under Date the 8th October 1838 (No. 353.)

H. CHAMIER Esq. to R. D. MANGLES Esq.
(Judicial Department, No. 39.)

Sir,

Fort St. George, 6th April 1838.

WITH reference to the concluding Paragraph of your Letter of the 12th February last, No. 88., I am directed by the Right Honourable the Governor in Council to transmit, for the Information of the Honourable the President in Council, the accompanying Copy of a Letter from the Register to the Foujdaree Udalt, stating the Opinion of that Court as to the Languages into which the proposed Penal Code prepared by the Indian Law Commissioners ought to be immediately translated, and the best Means in their Opinion available at this Presidency for the prompt and satisfactory Execution of the Work of Translation.

2. The Right Honourable the Governor in Council concurs with the Judges in thinking that it will be sufficient for every useful Purpose if the proposed Code be translated into Telooگو and Tamil, as they are the Two principal Languages spoken in the Provinces under this Presidency; but his Lordship in Council considers that, in order to combine Economy with Expedition and Accuracy in the Performance of the Work, it will be expedient to employ Mr. C. P. Brown to make the Telooگو Translation only of the proposed Code, whence the Tamil Translator to Government will have no Difficulty in getting it translated into Tamil, and he accordingly requests the Sanction of the Honourable the President in Council for the Adoption of this Measure.

3. The

3. The Right Honourable the Governor in Council is of opinion that it would be preferable to remunerate Mr. Brown by a Donation for the entire Work of Translation, instead of by a monthly Salary; and his Lordship in Council desires to leave it to the Honourable the President in Council to determine the Amount of Donation to be accordingly granted to him, merely observing, that as Mr. Brown is precluded from being appointed to any Office in the Provinces under this Presidency, except in the Political Department, as will

Letter from the Honourable Court, dated 30th September 1833, No. 3., Paragraphs 1 to 12.
Letter to the Honourable Court, dated 30th August 1836, No. 14., Paragraph 2.
Letter from the Honourable Court, dated 5th January 1838, No. 2., Paragraph 35.

be seen from the Letters noted in the Margin, which are already before the Supreme Government, he at present holds only the Situation of Persian Translator

to Government on a Salary of Rs. 400 per Mensem.

4. I am also directed to request, if the Work of translating the proposed Code into the Persian Language has been undertaken in Bengal, that a few Copies of it in that Language may be reserved on account of this Presidency, for the Purpose of being distributed to the most intelligent Members of the Mahomedan Community under this Presidency; and to state that the Judges have, under this Date, been called upon to report the Number of Copies which will be required for this Purpose, and that a Copy of their Reply, as soon as received, will be forwarded for your Information.

I have, &c.

(Signed) H. CHAMIER, Chief Secretary.

Enclosure in No. 62.

W. DOUGLAS Esq. to the GOVERNMENT OF INDIA.

(Foujdarry Udalt, No. 105.)

Sir,

Foujdarry Udalt, Registrar's Office,
26th March 1838.

	Copies
Four Provincial Courts, Three Copies each	12
Twelve Zillah Judges	12
Eight Assistant Judges	8
Principal Sudder Ameen, Honore	1
Nineteen Magistrates	19
Thirteen District Magistrates	13
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Foujdaree Udalt	6
	<hr/> 71
Mr. Casamajor	1
	<hr/> 72

WITH reference to Paragraph 1. of the Minutes of Consultation under Date the 14th instant, I am directed by the Judges of the Court of Foujdaree Udalt to transmit to you the accompanying Indent for Seventy-two Copies of the proposed Penal Code, Sixty-five Copies of which the Judges propose distributing for the Opinion of the several local Officers designated in the Margin.

2. The chief Native Languages into which, in the Opinion of the Court of Foujdaree Udalt, the proposed Code need to be immediately translated at Madras, are

Tamil and Teloo goo, and as the Tamil and Teloo goo Translators to Government, aided by their small Establishments, are not of themselves likely to be equal to effect the prompt and satisfactory Execution of the Work, it occurs to the Judges that it might be best accomplished by a Committee of Natives, superintended by the Tamil and Teloo goo Translators to Government and Mr. C. P. Brown, whose extensive Knowledge of the vernacular Languages of Southern India, but particularly of Teloo goo, renders it, in the Opinion of the Court of Foujdaree Udalt, highly desirable that his Services in particular should be secured for the Superintendence of the Work.

3. The Court apprehend that the Reverend Mr. Taylor, employed in the Examination of the M'Kenzie Manuscripts, under Orders from Government, with others connected with the College, might also aid in it, especially in the Tamil Version.

4. A Persian Translation of the proposed Code will, the Court conclude, be prepared in Bengal, and from thence the Judges would suggest that Copies be procured for Distribution to the most intelligent Members of the Mahomedan Community under this Presidency.

(Signed) W. DOUGLAS, Registrar.

No. 63.

H. CHAMIER Esq. to R. D. MANGLES Esq.

(Judicial Department, No. 404.)

Sir,

Fort St. George, 19th April 1838.

WITH reference to the concluding Paragraph of my Letter dated the 6th instant, No. 353, I am directed by the Right Honourable the Governor in Council to transmit, for the Information of the Honourable the President (263.)

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in Council, the annexed Copy of One from the Register of the Foujdaree Udalut, stating the Opinion of that Court that Fifty Copies of the Persian Translation of the proposed Penal Code will be required for Distribution amongst the Members of the Mahomedan Community under this Presidency, and to submit the Request of his Lordship in Council that this Number of Copies may be reserved for the Use of this Government, if the Translation of the proposed Code into Persian has been undertaken in Bengal.

I have, &c.

(Signed) H. CHAMIER, Chief Secretary.

No. 64.

W. DOUGLAS Esq. to the CHIEF SECRETARY TO GOVERNMENT.

(Foujdaree Udalut, No. 129.)

Foujdaree Udalut Registrar's Office,

14th April 1838.

Sir,

WITH reference to the Order of Government of the 6th instant, No. 372, I am directed by the Judges of the Court of Foujdaree Udalut to state their Opinion that Fifty Copies of a Persian Translation of the proposed Penal Code will be sufficient for Distribution amongst the Members of the Mahomedan Community under this Presidency.

(Signed) W. DOUGLAS, Registrar.

No. 65.

T. H. MADDOCK Esq. to H. CHAMIER Esq.

(Legislative Department, No. 781.)

Sir,

Fort William, 8th October 1838.

I AM now directed to acknowledge the Receipt of your Letters noted in the Margin, to the Address of my Predecessor, on the Subject of translating the proposed

Letter, dated 6th April 1838 No. 351 with Inclosure.
" 10th April 1838 No. 404

Criminal Code into the Languages current in the Territories subject to the Presidency of Madras; and the President in Council has instructed me to state in reply, that, pending the laborious Revision which the proposed Code must undergo, the Government of India has refrained from ordering its Translation into Persian or the vernacular Languages of the Provinces subject to the Presidency of Fort William, and his Honour in Council is of opinion that the Translations proposed by the Madras Government should for the same Reason be deferred.

2. It is, however, in the Contemplation of his Honour in Council to cause a Translation to be made in the Persian Language, if not in any others, of some particular Chapters of the proposed Code, for the Purpose of being submitted to Mahomedan Lawyers, and when this shall be effected a Number of Copies of the Work will be sent to Madras, for Reference to the Mahomedan Lawyers in that Presidency.

I have, &c.

(Signed) T. H. MADDOCK,
Officiating Secretary to Government of India.

No. 66.

EXTRACT from the PROCEEDINGS of the Honourable the PRESIDENT OF THE COUNCIL OF INDIA in Council in the Legislative Department, under Date the 3d December 1838, No. 2,429 of 1838.

J. P. WILLOUGHBY Esq. to the OFFICIATING SECRETARY to the GOVERNMENT OF INDIA in the Legislative Department.

(Judicial Department, No. 31.)

Sir,

Bombay Castle, 10th November 1838.

I AM directed to acknowledge the Receipt of your Letters dated the 12th of February and 7th of May last, No. 103. and No. 320, requesting the Opinion of

of this Government, the Judges of the Sudder Foujdaree Adawlut, and other Public Functionaries and Individuals, on the Subject of the new Penal Code prepared by the Indian Law Commission, and the Native Languages into which it should be translated.

To the Oriental Translator, dated 22d June 1838, No. 1278.
 Reply, dated 3d June 1838.
 Rejoinder, dated 3d August 1838.
 Replication, dated 8th August 1838.

2. With reference to the Fourth Paragraph of your Letter dated the 12th of February, I am instructed to transmit to you, for the Purpose of being laid before the Government of India, Copies of the Correspondence indicated in the Margin relative to the proposed Translation of the Code, and to inform you, that the Information called for on the other Points will be furnished as soon as Replies have been received from the several Authorities and Individuals to whom Copies of the Code have been sent.

3. Lieutenant-Colonel Vans Kennedy, the Oriental Translator at this Presidency, having been consulted as to the best Mode of giving Effect to the Wishes of the Government of India on the above Subject, stated, that it is indispensable that the Code should be translated into Mahratta and Guzerattee, being the Two principal Languages used on this Side of India. At the same Time he declared it to be his Opinion that it would be impracticable to translate it into any vernacular Dialect of India accurately and intelligibly.

4. The Honourable the Governor in Council considering that no such Difficulty is anticipated in translating the Work in question into Bengallee, cannot conceive that there will be the Impossibility stated by the Oriental Translator of rendering it into Mahratta and Guzerattee, for whatever Difficulty there might be in understanding the precise Language of the Definitions, the Illustrations render all plain and easy, and these Illustrations are of course to form a Part of the proposed Translation as well as the Definitions.

The View thus taken by Government was accordingly communicated to Colonel Vans Kennedy, with a Request that he would report whether the Objection which he had urged continued to exist, and he replied that, having been previously aware that the whole of the Code should be translated, this Circumstance did not alter the Conviction he had expressed in regard to the Impracticability of translating it.

His Honour in Council, however, will observe, from the Correspondence which accompanied my Letter dated the 3d instant, No. 2,127, recommending the Appointment of Mr. Bettington, an Assistant to the Collector of Belgaum, to the Office of Canarese Translator to this Government, that that Gentleman has offered to undertake the Duty of translating the Code into Canarese, which is the Language chiefly used in the Dharwar and Belgaum Collectorates.

I have, &c.

(Signed) J. P. WILLOUGHBY,
 Secretary to Government.

Enclosure 1 in No. 66.

J. P. WILLOUGHBY Esq. to Lieutenant-Colonel VANS KENNEDY.
 (Judicial Department, No. 1,278.)

Sir,

Bombay Castle, 22d June 1838

I AM directed by the Right Honourable the Governor in Council to transmit the accompanying Extract, Paragraph 4, of a Letter from the Officiating Secretary to the Government of India, dated the 12th of February last, and to request that you will favour Government with your Opinion as to the best Mode of giving Effect to the Wishes of the Government of India regarding the Native Languages into which the new Criminal Code ought to be immediately translated.

I have, &c.

(Signed) J. P. WILLOUGHBY,
 Secretary to Government

Enclosure 2 in No. 66.

Lieutenant-Colonel VANS KENNEDY to the GOVERNMENT OF BOMBAY.

Sir,

Bombay, 23d June 1838

IN reply to your Letter of Yesterday's Date, I have the Honour to submit to the Right Honourable the Governor in Council that, as distinct Languages prevail in the Two principal

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principal Divisions of the Bombay Presidency, it seems to me indispensable that the proposed Penal Code should be translated into Mahratta and Guzerattee, in order to render it understood by the Natives of those Two Provinces. But I beg leave to avail myself of this Opportunity to state, that it appears to me, after a careful Examination of that Code, that it will be impracticable to translate it into any vernacular Dialect of India accurately and intelligibly, for the Law Commissioners themselves admit, in the Letter prefixed to it, that they have been obliged to have recourse to Explanations and Illustrations for the Purpose of elucidating their Definitions, because *such Definitions standing by themselves might repel and perplex the Reader, and would, perhaps, be fully comprehended only by a few Students after long Application.* According, therefore, to his Admissions, even the English Reader would be at a loss to understand the Code; and it need scarcely be observed that the Practicability of translating from one Language into another with Clearness and Accuracy depends entirely on the Perspicuity and Intelligibility of the Original to be translated, with regard, in particular, to the vernacular Dialects of India, unless the Style of the Original be perspicuous, concise, and the Meaning free from all Ambiguity; and in these Requisites the proposed Penal Code is singularly deficient. It would in my Opinion be impracticable to translate it into any One of them in such a Manner as would be comprehended by the Natives.

I have, &c.

(Signed) VANS KENNEDY,
Oriental Translator to Government

Enclosure 3 in No. 66.

(Judicial Department, No. 1,633 of 1838.)

J. P. WILLOUGHBY Esq. to Colonel VANS KENNEDY.

Sir,

Bombay Castle, 3d August 1838.

I AM directed to acknowledge the Receipt of your Letter, dated the 23d June last, stating your Conviction of the Impracticability of accurately and intelligibly translating the proposed Penal Code into any of the vernacular Dialects of India.

2. In reply I am instructed to inform you, that as Government has been given to understand that no Difficulty is anticipated in translating the Work into Bengallee, the Honourable the Governor in Council cannot imagine that there would be the Impossibility stated by you in rendering it into Mahratta and Guzerattee, the Two Languages principally used on this Side of India, for whatever Difficulty there might be in understanding the precise Language of the Definitions, the Illustrations render all plain and easy, and these Illustrations, I am desired to add, are to form a Part of the proposed Translations, as well as the Definitions.

3. As, therefore, the Impossibility of translating the Code so as to be intelligible to Natives is not anticipated in Bengal, I am instructed to request that you will favour Government with your further Report, whether the Objections which you have urged would continue to exist when it is considered that the Illustrations as well as the Code are to be translated.

I have, &c.

(Signed) J. P. WILLOUGHBY,
Secretary to Government.

Enclosure 4 in No. 66.

Colonel VANS KENNEDY to the GOVERNMENT OF BOMBAY.

Sir,

Bombay, 8th August 1838.

I HAVE the Honour to acknowledge the Receipt, on the 6th instant, of your Letter of the 3d instant, and in reply to the concluding Paragraph I beg leave to submit to the Honourable the Governor in Council that, having been aware that it was intended that the whole of the proposed Penal Code should be translated, this Circumstance does not alter the Conviction which I have taken the liberty of expressing with respect to the Impracticability of translating that Code accurately and intelligibly into the vernacular Dialects of India.

2. That Conviction proceeded from the Language and Arrangement of the Code being so entirely dissimilar to the Native Idiom and to the Mode of Composition customary in those Dialects; for it deserves to be considered that the following idiomatic Peculiarities exist in Mahratta and I believe in every other vernacular Dialect:

There is no Future answering to the English *shall*; there is no Subjunctive or Potential Mood; there is no passive Voice, although the present, past, and future Tenses of that Voice may, in some Cases, be expressed by a particular Construction.

An *immediate* Object cannot be the Nominative to an *active* Verb; in general the Nominative to the Verb must be expressed, and, consequently, an English Sentence in the impersonal Form cannot be translated until the proper Nominative to the Verb is ascertained.

And from this Deficiency in grammatical Forms it necessarily follows that, unless each Sentence of the English Original is concise, perspicuous, and free from all prolix and involved Construction, it becomes impracticable to translate it accurately and intelligibly.

3. But the following Examples will be sufficient to show that the Style in which the proposed Penal Code is composed is singularly deficient in Conciseness and Perspicuity, and that the Construction of the Sentences is both prolix and involved :

Paragraph 296. Whoever does any Act or omits what he is legally bound to do, with the Intention of thereby causing or with the Knowledge that he is thereby likely to cause the Death of any Person, and does by such Act or Omission cause the Death of any Person, is said to commit the Offence of voluntary culpable Homicide. Page 76, Paragraph 70. Nothing which is not intended to cause Death is an Offence by reason of any Harm which it may cause, or be intended by the Doer to cause, or be known by the Doer to be likely to cause, to any Person for whose Benefit it is done, in good Faith, and who has given a free and intelligent Consent, whether express or implied, to suffer that Harm, such Consent not having been obtained by wilful Misrepresentation on the Part of the Person who does the Thing. Page 14, Paragraph 87. Assault: A Person is said to use Force to another if he causes Motion, or Change of Motion, or Cessation of Motion to that other, or if he causes to any Substance such Motion, or Change of Motion, or Cessation of Motion as brings that Substance into Contact with any Part of that other's Body, or with anything which that other is wearing or carrying, or with anything so situated that such Contact affects the other's Sense of Feeling; provided that the Person causing the Motion, or Change of Motion, or Cessation of Motion causes that Motion, Change of Motion, or Cessation of Motion in One of the Three Ways herein-after to be described:—First, by his own bodily Power; secondly, by disposing any Substance in such a Manner that the Motion, or Change of Motion, or Cessation of Motion takes place without any further Act on his Part, or on the Part of any other Person; thirdly, by inducing any Animal to move, to change its Motion, or to cease to move. Page 87, Paragraph 103. A Person is said subsequently to abet the doing of a Thing who, knowing that Thing to have been done, assists or attempts to assist, by any Act or illegal Omission, the Doer of that Thing to avoid any evil Consequence of doing that Thing, or to derive from the doing of that Thing any Advantage, with a view to which Advantage that Thing was done. Page 26.

4. Such is the Language in which the Enactments of the proposed Penal Code are written, and this Language, in my Opinion, admits not of being translated into any vernacular Dialect in such a Manner as would enable the Native to comprehend it.

5. The Arrangement also of the Code contributes much to the Impracticability of translating it, for the Translator, in consequence of the Exceptions, Explanations, and Illustrations being separated from the Definitions, and treated of distinctly, is precluded from introducing into the Definitions such explanatory Words as would be requisite for removing Obscurity, and for adapting the Native Idiom to so dissimilar a Language as English. An Example will perhaps render my Meaning clearer, and I may take the following :

Paragraph 299. Voluntary culpable Homicide is *voluntary culpable Homicide in Defence* when it is committed by causing Death under such Circumstances that such causing of Death would be no Offence if the Right of private Defence extended to the voluntary causing of Death in Cases of Assault not falling under any of the Descriptions enumerated in Clause 76, or in Cases of Theft, Mischief, or Criminal Trespass not falling under any of the Descriptions enumerated in Clause 79, Page 79. For it will, I think, be evident that the above Definitions, if translated literally, would be wholly unintelligible to a Native; and yet, in consequence of the Arrangement adopted in the Code, the Translator would not be at liberty to deviate in the least from the precise Words of the Definition, because its Meaning and Intent are to be ascertained by Reference to the Illustrations and to the Chapter of general Exceptions.

6. It appears to me, also, that if the Penal Code be intended for the Information and Guidance of the Natives, the Definitions, in translating which the principal Difficulty consists, are altogether unnecessary; for, without defining Homicide and other Offences, it would be much more consistent with the Genius of their Language, and with their Modes of thinking, were the Act which is to incur Punishment to be described in so plain and simple a Manner that a Man of common Understanding would from reading the Description at once comprehend what it was that he was prohibited from doing. But such Information is not afforded by the proposed Penal Code, for the precise Kind and Degree of an Offence cannot be ascertained from it unless the different Passages that lie scattered through it under the Designations of Explanation, Exceptions, Illustrations, and Abetment are first examined and considered. This Code, therefore, appears to me to be in every respect unadapted for the Natives of this Country, for they are not sufficiently educated or accustomed to Reflection to admit of their undertaking such an Exercise of Judgment, and of eliciting from what is vaguely and obscurely written its true Intent and Meaning.

7. When, therefore, I took the liberty of expressing my Conviction that it would be impracticable to make an accurate and intelligible Translation of the proposed Penal Code, I adverted, not only to the mere rendering of it from English into Mahratta or any other vernacular Dialect, but also to what I understand to be the Intention of the Government of India, namely, that the Code should be so translated as to enable the Natives to comprehend its Enactments with Facility and without Mistake. I may in consequence be permitted to observe, that I am convinced that were the Code to be placed in the Hands of Natives well acquainted with English they would not be able to understand it; for the Law Commissioners themselves admit, in the Letter prefixed to it, that *the Definitions may repel and perplex the Reader, and would perhaps be fully understood by only a few Students after long Application.* It cannot, therefore, be expected that any Translation of that Code would remove the Obscurity which is thus admitted to exist in the Original, or would render it more adapted to the Comprehension of the Natives.

I have, &c.
(Signed) VANS KENNEDY,
Oriental Translator to Government.

No. 67.

T. H. MADDOCK Esq. to J. P. WILLOUGHBY Esq.
(Legislative Department, No. 879.)

Sir,

Fort William, 3d December 1838.

IN reply to your Letter of the 10th ult., No. 2,429, and its Enclosures, on the Subject of the Translation of the proposed Penal Code, I am directed to transmit, for the Information of the Honourable the Governor in Council, Copy of a Letter on the same Subject which, by Orders of the Honourable the President in Council, was addressed to the Chief Secretary to the Government of Madras on the 8th October last.

I have, &c.
(Signed) T. H. MADDOCK,
Officiating Secretary, Government of India.

No. 68.

W. CHAMIER Esq. to J. P. GRANT Esq.
(Judicial Department, No. 66.)

Sir,

Fort St. George, 4th January 1839.

I AM directed by the Right Honourable the Governor in Council to transmit to you the accompanying Extract (Paragraphs 32 to 34) from the Proceedings of the Court of Foujdaree Udalt, dated 20th September 1838, and of the Papers alluded to therein, with the Observations of Government passed thereon under this Date, and to request that they may be referred to the Indian Law Commissioners for their Consideration.

I have, &c.
(Signed) W. CHAMIER, Chief Secretary.

Enclosure in No. 68.

EXTRACT from the Proceedings of the Foujdaree Udalt, dated 20th September 1838,
No. 250.

Paragraph 32. The Second Suggestion is offered by the Head of Police of Calegherry, and is to the Effect that Heads of Police be vested with Authority to inquire into petty Cases of using false Weights and Measures.

33. The Magistrate is of opinion that this Suggestion should be adopted. He observes that the Offence of using false Weights and Measures is a public Injury, which falls with the greatest Severity upon the Poor, "and removed as the European Authorities must necessarily be from the more remote Parts of the District, it appears" to the Magistrate "that there is no effectual Check upon such Practices, and that the Offence should be made

" made liable to a greater local Cognizance than is now the Case," and accordingly he suggests that the Heads of Police should be authorized to receive and to try Complaints for using false Weights and Measures, and to punish " by Fine within the Limit they are now authorized by the Regulations to impose for other Offences, referring the Case to the Magistrate for a heavier Punishment under the Provisions of Act XXXIII. of 1837, should they deem it called for."

34. The Power here proposed to be exercised by the Heads of Police could be conferred upon them only by a legislative Enactment; but the Court of Foujdaree Udalt are of opinion that Circumstances do not call for special Legislation on the Subject, and that it will be sufficient to await the Issue of the Criminal Code of Procedure, now in course of Preparation by the Law Commission, to whose Notice the Suggestion may be brought.

EXTRACT from the Minutes of Consultation under Date the 4th January 1839.

Paragraph 6. The Right Honourable the Governor in Council approves of the Suggestion of the Court of Foujdaree Udalt, and resolves that a Copy of these Paragraphs, and of the Papers alluded to therein, be transmitted to the Government of India, with a Request that they may be referred to the Indian Law Commissioners, for their Consideration.

Paras. 32 to 34

(Signed) H. CHAMIER, Chief Secretary.

(Judicial Department.)

EXTRACT from a Report from the Magistrate of Nellore to the Register of the Provincial Court of Circuit, Northern Division, Masulipatam, dated 15th January 1838.

Paragraph 7. * * * The Second Suggestion is made by the Calgherry Head of Police, viz., that Heads of Police should be vested with Authority to inquire into petty Cases of using false Weights and Measures.

8. * * * The Suggestion of the Calgherry Head of Police, I think, should be adopted. The Offence of using false Weights and Measures is a public Injury which falls with the greatest Severity upon the Poor. Removed as the European Authorities must necessarily be from the more remote Parts of the District, it appears to me that there is no effectual Check upon such Practices, and that the Offence should be made liable to a greater local Cognizance than is now the Case. The Heads of Police have in their several Districts the Means of ascertaining the Existence of such an Abuse, and I am not aware that there would be any Objection to Heads of Police receiving and trying Complaints for using false Weights and Measures, and punishing by Fine within the Limit they are now authorized by the Regulations to impose for other Offences, referring the Case to the Magistrate for a heavier Punishment under the Provisions of Act XXXIII. of 1837, should they deem it called for.

(Signed) H. CHAMIER, Chief Secretary.

No. 69.

H. T. PRINSEP Esq. to H. CHAMIER Esq.

(Legislative Department, No. 97.)

Sir,

Fort William, 18th February 1839.

I AM directed to acknowledge the Receipt of your Letter No. 7., dated the 4th ultimo, with its Enclosure, and in reply to state, that before referring the Matter, as requested, to the Law Commission, the Honourable the President in Council wishes to have the Opinion of the Judges of the Foujdary Court, whether, as regards the Madras Presidency, they see any Objection to passing Chapter XIII. of the Penal Code into a Law, in Supersession of all previous Regulation or Practice upon the Subject; and whether they think that any further Definition of a false Balance, Weight, or Measure is requisite; and whether the Proof of Intention in the 255th Section may create Difficulties; and whether a Power ought not to be given of entering Shops and other Places for the Purpose of detecting false Weights, and Penalties imposed for obstructing Magistrates in examining Weights.

2. Upon the Subject of Procedure with reference to the 13th Section of the Code, his Honour in Council would wish to have the Opinion of the same Court whether they see any Objection to the Punishment (viz., a Year's Imprisonment and indefinite Fine,) undergoing a material Modification, according as the Charge is brought before a Tribunal which has the Power of imprisoning for a Year and fining indefinitely, or has only more limited Powers of Imprisonment and Fine; or whether the Charge should be confined to such Tribunals as can impose the whole Punishment imposed by the Penal Code; also whether the Power of a Year's Imprisonment and indefinite Fine can be safely intrusted to a single Magistrate, and whether in the Cases under consideration there should be any Appellate Jurisdiction.

I have, &c.

(Signed) H. T. PRINSEP,
Secretary to the Government of India.

No. 70.

H. CHAMIER Esq. to J. P. GRANT Esq.
(Judicial Department, No. 646.)

Sir,

Fort St. George, 6th August 1839.

Dated 18th July
1839, No. 131.

WITH reference to your Letter of the 18th February last, No. 97., I am directed by the Right Honourable the Governor in Council to transmit, for the Information of the Honourable the President in Council, the accompanying Copy of a Letter from the Acting Register of the Foujdaree Udalut, explaining, that the Suggestion of the Magistrate of Nellore, proposed to be referred to the Indian Law Commissioners, was to empower Heads of Police to receive and try Complaints for using false Weights and Measures, that the Enactment of Chapter 13 of the Penal Code would not meet the Object of that Suggestion, and that as no Necessity exists for specially enacting that Chapter, the Promulgation of such an Enactment would be objectionable.

I have, &c.

(Signed) F. H. CHAMIER, Chief Secretary.

Enclosure in No. 70.

T. H. DAVIDSON Esq. to the CHIEF SECRETARY to GOVERNMENT.

(No. 131.)

Sir,

Foujdaree Udalut, Register's Office, 18th July 1839.

1. I am directed by the Judges of the Foujdaree Udalut to acknowledge the Receipt of the Order of Government dated the 26th March 1839, No. 277, referring for their Opinion, and with reference to Paragraph 6 of the Extract from the Minutes of Consultation dated 4th January last, No. 6, a Communication from the Secretary to the Government of India dated 18th February 1839, on the Question of the Expediency as regards the Madras Presidency of passing Chapter XIII. of the Penal Code into a Law, in supersession of all previous Regulations or Practice upon the Subject, and on the several Points connected with that Question.

2. The Judges direct me to observe, that the Suggestion of the Magistrate of Nellore, proposed by the Court of Foujdaree Udalut, in Paragraph 34 of their Proceedings dated the 20th September 1838, to be referred to the Law Commission, was, that "the Heads of Police should be authorized to receive and try Complaints for using false Weights and Measures, and to punish by Fine within the Limits they are now authorized by the Regulations to impose for other Offences, referring the Case to the Magistrate for a heavier Punishment under the Provisions of Act XXXIII. of 1837, should they deem it called for."

3. The Judges observe that the Enactment of Chapter 13 of the Penal Code would not meet the Object of the Magistrate in the above Suggestion, and that the Punishment adjudicable under its Provisions is not competent to the Magistrate under the Regulations of this Presidency.

4. The Judges are of opinion that no Necessity exists for specially enacting the said Chapter of the Penal Code, and that therefore it would be objectionable to promulgate such an Enactment.

5. The

5. The Criminal Judge has full Power to deal with the fraudulent Practices in question under the General Regulations (in Cases considered by the Magistrate to require more severe Punishment than he is authorized to inflict under the Provisions of Section 54, Regulation XI. of 1816), either by Punishment to the Extent provided in Section 7, Regulation X. of 1816, or, when that may appear to him not sufficient, by Committal for Trial by the Court of Circuit, who would apply to such Cases the Provisions of Clause 7 Section 2. Regulation XV. of 1803.

6. With reference to the other Questions in the Letter from the Secretary to the Government of India, the Judges of the Foujdaree Udalt observe,—

1st. That in their Opinion the Definition of a false Balance, Weight, or Measure, does not appear necessary.

2dly. That the Proof of Intention referred to in the 255th Section of the Penal Code will be difficult, if not impossible.

3dly. That Heads of Villages and Heads of District Police should be empowered (as by Sections 11. and 37. Regulation XI. of 1816) to search for false Weights, and Penalties be imposed for obstructing the Search.

4thly. That the Power of indefinite Fine is, in the Opinion of the Judges, objectionable.

5thly. That it seems objectionable to subject the same Offence to a greater or less Penalty according to the Jurisdiction of Tribunals.

6thly. That (supposing the Power of indefinite Fine not given) there does not appear to be any Necessity for Appellate Jurisdiction in these Cases.

7. I am directed, in conclusion, to explain that all Decisions of subordinate Criminal Courts are, under existing Rules, subjected to Revision by the Court of Foujdaree Udalt

(Signed) T. H. DAVIDSON, Acting Registrar.

No. 71.

J. P. GRANT Esq. to J. P. WILLOUGHBY Esq.

(Legislative, No. 442.)

Sir,

Fort William, 12th August 1839.

I AM directed by the Honourable the President in Council to acknowledge the Receipt of your Letter No. 1,567, dated the 10th June last, furnishing the Opinions of the Judges of the Sudder Foujdary Adawlut, accompanied by Reports from several subordinate Officers under the Presidency of Bombay, on the Provisions of the proposed Penal Code, printed Copies of which were furnished for that Purpose with Mr. Officiating Secretary Mangles's Letter of the 12th February 1838, to the Address of Mr. Chief Secretary Wathen.

2. The Honourable the Court of Directors, in a Despatch since received, having said that when the said proposed Penal Code submitted by the Indian Law Commissioners shall for some Time have engaged the Attention of Persons conversant with the Subjects of which it treats, the Authorities in India and in England will feel themselves more competent than at present to form a satisfactory Judgment concerning its general Merits, and to determine what Sort of Scrutiny it ought to undergo before being brought into practical Operation, the Honourable the President in Council directs me, with reference to the Second Paragraph of your Letter under Acknowledgment, to request that you will inform the Honourable the Governor in Council that his Honour in Council will be glad to be favoured with the further Reports therein promised, in order that the Indian Government in this Country and at Home may be assisted by such Observations and Suggestions as they may contain.

I have, &c.

(Signed) J. P. GRANT,
Officiating Secretary to Government of India.

No. 72.

J. P. GRANT Esq. to the SECRETARIES to the GOVERNMENTS of BENGAL, MADRAS (No. 439.), and NORTH-WEST PROVINCES (No. 440.), in the JUDICIAL DEPARTMENT.

(Legislative.)

Sir,

Fort William, 12th August 1839.

THE Honourable the Court of Directors, in a Despatch recently received, having said that when the proposed Penal Code submitted by the Indian Law Commissioners (whereof printed Copies were forwarded with Mr. Officiating Secretary Mangles's Letter of 12th February 1838 to *your Address**) shall for some Time have engaged the Attention of Persons conversant with the Subjects of which it treats, the Authorities in India and in England will feel themselves more competent than at present to form a satisfactory Judgment concerning its general Merits, and to determine what Sort of Scrutiny it ought to undergo before being brought into practical Operations, and having further remarked, that material Advantage may result from calling respectively upon the Judges of the several Supreme and Sudder Courts to report upon particular Parts of the Code, with reference to the Systems of Criminal Law which they have heretofore administered, I am directed by the Honourable the President in Council to repeat the Request contained in Mr. Mangles's Letter above alluded to, and to desire that you will, with the Permission of the ()†, call upon the Judges of the *Nizamut Adawlut*‡ to submit their Observations and Suggestions, with any Returns from any Public Functionaries which may have been received by them, in order that the Indian Government in this Country and at home may be thereby assisted in the Review of the Work in question, which they must soon commence upon.

I have, &c.

(Signed) J. P. GRANT,
Officiating Secretary to Government of India.

No. 73.

THE Honourable the PRESIDENT and MEMBERS of the COUNCIL of INDIA to the Honourable Sir EDWARD RYAN Knight (No. 347.), Chief Justice, Calcutta, the Honourable J. P. GRANT Knight (No. 348.), Puisne Justice, Calcutta, the Honourable R. B. COMYN Knight (No. 443.), Chief Justice, Madras, the Honourable EDWARD J. GAMBIER Knight (No. 442a.), Puisne Justice, Madras, the Honourable W. NORRIS Knight (No. 444.), Recorder of Prince of Wales Island, Singapore, and Malacca.

(Legislative.)

Honourable Sirs,

Fort William, 12th August 1839.

THE Honourable the Court of Directors, in a Despatch recently received, having said that when the proposed Penal Code submitted by the Indian Law Commissioners (whereof a Copy was presented with the Letter of our Predecessors to your Address, dated the 12th of February 1838,) shall for some Time have engaged the Attention of Persons conversant with the Subjects of which it treats, the Authorities in India and in England will feel themselves more competent than at present to form a satisfactory Judgment concerning its general Merits, and to determine what Sort of Scrutiny it ought to undergo before being brought into practical Operation; and having further remarked that material Advantage may result from calling respectively upon the Judges of the several Supreme and Sudder Courts to report upon particular Parts of the Code with reference to the Systems of Criminal Law which they

* To North-west Provinces :—To the Address of Mr. Officiating Secretary Thomson.

† To Bengal :—The Hon. the Deputy Governor of Bengal.

To North-west Provinces :—The Right Hon. the Governor General for the North-west Provinces.

To Madras :—The Right Hon. the Governor in Council.

‡ To Bengal :—At the Presidency.

To North-west Provinces :—At Allahabad.

To Madras :—Sudder Foujdarry Adawlut.

have heretofore administered ; we do ourselves the Honour to repeat the earnest Request contained in the Letter of our Predecessors above alluded to, that the Indian Government in this Country and at home may be assisted in the Review of the Work in question, which they must soon commence upon, by such Observations and Suggestions as may be dictated by your intimate Acquaintance with the important Subject to which that Work relates.

We have, &c.

(Signed)

H. ROBERTSON.
W. W. BIRD.
W. CASEMENT.
A. AMOS.

No. 74.

The Honourable the PRESIDENT and MEMBERS of the COUNCIL OF INDIA to the Honourable Sir JOHN AWDRY Knight, Chief Justice of the SUPREME COURT, BOMBAY.

(Legislative, No. 445.)

Honourable Sir,

Port William, 12th August 1839.

THE Honourable the Court of Directors, in a Despatch recently received, having said that when the proposed Penal Code submitted by the Indian Law Commissioners (upon the general Character of which Work you were so good as to favour our Predecessors with your Sentiments in your valued Communication to their Address of Date the 2d June 1838) shall have engaged the Attention of Persons conversant with the Subjects of which it treats, the Authorities in India and in England will feel themselves more competent than at present to form a satisfactory Judgment concerning its general Merits, and to determine what Sort of Scrutiny it ought to undergo before being brought into practical Operations ; and having further remarked, that material Advantage may result from calling respectively upon the Judges of the several Supreme and Sudder Courts to report upon particular Parts of the Code, with reference to the Systems of Criminal Law which they have heretofore administered ; we do ourselves the Honour to repeat the earnest Wish expressed in the Second Paragraph of our Predecessors Letter to your Address of Date the 2d July 1838, for the further Communication which you kindly promised in your Letter above alluded to, in order that the Indian Government in this Country and at home may be assisted in the Review of the Work in question, which they must soon commence upon, by such further Observations and Suggestions as may be dictated by your intimate Acquaintance with the important Subject to which that Work relates.

We have, &c.

(Signed)

T. C. ROBERTSON.
W. W. BIRD.
W. CASEMENT.
A. AMOS.

No. 75.

J. P. GRANT Esq. (No. 340.) to the ADVOCATE GENERAL at CALCUTTA and BOMBAY (No. 441.)

(Legislative.)

Sir,

Port William, 12th August 1839.

THE Honourable the Court of Directors in a Despatch, recently received, having said that when the proposed Penal Code submitted by the Indian Law Commissioners (whereof a Copy was forwarded to you with Mr. Officiating Secretary Mangles's Letter of 12th February 1838) shall for some Time have engaged the Attention of Persons conversant with the Subjects of which it treats, the Authorities in India and in England will feel themselves more competent than at present to form a satisfactory Judgment concerning its general Merits, and to determine what Sort of Scrutiny it ought to undergo before being brought into practical Operation, I am directed by the Honourable the President in

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Council

Council to repeat the Request contained in the Letter of Mr. Mangles above alluded to, that the Indian Government in this Country and at home may be assisted in the Review of the Work in question, which they must soon commence upon, by such Observations and Suggestions as may be dictated by your intimate Acquaintance with the important Subject to which that Work relates.

I have, &c.
(Signed) J. P. GRANT,
Officiating Secretary to Government of India.

No. 76.

The Honourable the PRESIDENT and MEMBERS of the COUNCIL OF INDIA to the Honourable Sir H. SETON Knight, Puisne Justice of the SUPREME COURT, CALCUTTA.

(Legislative, No. 346.)

Honourable Sir,

Fort William, 12th August 1839.

THE Honourable the Court of Directors, in a Despatch recently received, having said that when the proposed Penal Code submitted by the Indian Law Commissioners (of which we beg to forward to you a Copy herewith) shall for some Time have engaged the Attention of Persons conversant with the Subjects of which it treats, the Authorities in India and in England will feel themselves more competent than at present to form a satisfactory Judgment concerning its general Merits, and to determine what Sort of Scrutiny it ought to undergo before being brought into practical Operation; and having further remarked, that material Advantage may result from calling respectively upon the Judges of the several Supreme and Sudder Courts to report upon particular Parts of the Code, with reference to the Systems of Criminal Law which they have heretofore administered; we do ourselves the Honour earnestly to request that we may be favoured with such Observations upon the Provisions of the proposed Penal Code, and such Suggestions for supplying any Defects that may be found in it, as may be dictated by your intimate Acquaintance with the important Subjects to which the Work relates, in order that the Indian Government in this Country and at home may be thereby assisted in the Review of the Work in question, which they must soon commence upon.

We have, &c.
(Signed) T. C. ROBERTSON.
W. W. BIRD.
W. CASEMENT.
A. AMOS.

No. 77.

J. P. GRANT Esq. to W. H. MACNAGHTEN Esq. (No. 467.), H. T. PRINSEP Esq. (No. 362.), General FRASER, HYDERABAD (No. 468.), Major SLEEMAN (No. 469), and Colonel SUTHERLAND (470.)

(Legislative.)

Sir,

Fort William, 2d September 1839.

THE Honourable Court of Directors having in a late Despatch said that when the proposed Penal Code, submitted by the Indian Law Commissioners, shall for some Time have engaged the Attention of Persons conversant with the Subjects of which it treats, the Authorities in India and England will feel themselves more competent than at present to form a satisfactory Judgment concerning its general Merits, and to determine what Sort of Scrutiny it ought to undergo before being brought into practical Operation, the Honourable the President in Council feeling that the Time is drawing near when the Review of the proposed Penal Code must be commenced upon, has been pleased to recall the Attention of the several local Governments to Letters addressed to them by Mr. Official Secretary Mangles on the 12th of February

1838,

1838, requesting that Copies of the Work in question might be distributed in such a Manner as would tend, in the Judgment of those Governments, to the most useful Results.

2. The President in Council fears that under that Letter Officers not under the Orders of any local Government may not have been furnished with Copies of the Code, nor asked to forward their Comments thereon. Being of opinion that the Government of India must derive material Assistance from your Suggestions and Observations in the difficult and important Task of reviewing that Work, his Honour in Council directs me specially to request that you will favour him with the same at no very distant Time.

3. A Copy of the proposed Code accompanies this Letter.

I have, &c.

(Signed) J. P. GRANT,
Officiating Secretary to Government of India

No. 78.

H. CHAMIER Esq. to T. H. MADDOCK Esq.

(Judicial Department, No. 76/290.)

Neilgherries, Ootacamund,

7th April 1840.

Sir,

From the Officiating Secretary to the Government of India, dated 12th February 1838, No. 88.

From the Officiating Secretary to the Government of India, 7th May 1838, No. 319.

From the Officiating Secretary to the Government of India, dated 12th August 1839, No. 430.

1. WITH reference to the Letters noted in the Margin, I am directed by the Right Honourable the Governor in Council to transmit, for Submission to the Right Honourable the Governor General of India in Council, the accompanying Copy of a Communication from the Register of the Foujdaree Udalt of its original Accompaniments, being Copies of the Opinions recorded by the Second and Third Judges of that Court upon the proposed Penal Code, and of the Opinions of the subordinate Authorities in the Provinces on the same Subject, with a Digest of the latter prepared in the Office of the Foujdaree Udalt.

Dated 19th February 1840, No. 43.

2. I am also directed to submit, for the Information of his Lordship in Council, Copies of Letters from the Court of Commissioners for the Recovery of Small Debts, and the Acting Chief Magistrate and Superintendent of Police, explanatory of the Circumstances under which those Departments are unable to offer any Observations in respect to the Provisions of the proposed Penal Code.

Dated respectively the 24th Dec. 1839 and 11th Feb. 1840.

I have, &c.

(Signed) HENRY CHAMIER, Chief Secretary.

Enclosure 1 in No. 78.

W. DOUGLAS Esq. to the CHIEF SECRETARY to GOVERNMENT.

(No. 43.)

Sir,

Foujdaree Udalt, Register's Office, 19th February 1840.

WITH reference to the Extract from the Minutes of Consultation under Date the 14th March 1838, No. 271, and the Order of Government dated 9th September 1839, No. 727, I am directed by the Judges of the Foujdaree Udalt to transmit to you, for Submission to the Government of India, Copies of the Opinions recorded by the Second and Third Judges of this Court upon the proposed Penal Code, with Copies of the Opinions of the subordinate Authorities in the Provinces on the same Subject, and a Digest of those Opinions prepared in this Office.

(Signed) W. DOUGLAS, Register.

Enclosure 2 in No. 78

MINUTE of the 2d Puisne Judge of the Court of Foujdaree Udalt on the proposed Penal Code.

1. In the Letter of the Officiating Secretary to the Government of India, dated the 12th February 1838, it is stated, that "the Legislative Council will thankfully receive any Remarks upon the Code, and all Information upon Subjects connected with it, that may be offered,"—"from a Desire to render it as complete and free from Faults as possible"

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"possible;" and this Court is required "to collect and digest the Opinions of those Members of the Public Service, whether subordinate to them or otherwise, whom they may deem qualified to afford valuable Information upon any of the important Subjects to which the Code relates, to point out Defects, or to suggest Improvements," and "to hand up the Returns that they may receive to their Requisitions, with a Report of their own Opinions, through the local Government, for the Consideration of the Legislative Council.

2. And in the Letter from the Secretary to the Government of India with the Governor General, dated 13th April 1838, it is stated, that the Judges of the Sudder Courts "should be particularly requested to state their Opinion, not only as to whether Provision is made in the Code for the different Offences which are prevalent in India, but also as to the Necessity of the proposed Enactments, and the Adoption of the proposed Penalties with reference to all the Circumstances of the Country, and to the Habits and Feelings of the large and various Population which will be affected by them."

3. It is "left to each Court to determine whether their Opinion should be pronounced on the entire Code, or whether some separate Chapters should also more particularly be reported on." It is at the same Time observed, "that the accurate and close Examination of some distinct Chapters must be considered nearly indispensable to the Formation of a satisfactory Judgment on the Work."

4. I have examined this Work with Attention, and proceed to offer my Opinions in detail upon its Contents, noticing, so far as appears to me to be necessary, the Returns received from subordinate Officers.

5. I must premise, that in my Opinion the Fourth Paragraph of the Letter from the Indian Law Commissioners, dated 14th October 1837, to the Governor General of India in Council contains Reasons why the Publication of this Code should have been postponed. It appears to be admitted, that under the Circumstances of its Publication, the Code "cannot be clear and explicit;" an insuperable Objection, in my Opinion, to its being brought into operation, which is nevertheless suggested in the last Paragraph but One of this Letter, where it is pointed out that in many Parts of the Code Reference is made to a Code of Procedure not yet in existence, the Absence of which, however, throws Difficulties in the Way of a critical Examination of the Code.

6. I think that Parts of the Code are open to the Objection noticed in this Letter, of being "drawn in Words which convey no Meaning to the People, who are to obey it," that in striving to attain Precision a "rugged and intricate Phraseology" has been adopted which is absolutely untranslatable into the Languages of this Country, and that in some Instances Expressions are used in a Sense irreconcilable with the undoubted Meaning of the Words. The Law Commissioners determined to sacrifice Perspicuity to Precision. In so doing I consider that they have lost more than they have gained, and I decidedly prefer the popular and intelligible Phraseology of the Regulations of Bengal and Madras to the Style of this Code, which to the Natives of India will appear a completely new Language.

I have no particular Observation to make on this Chapter.

Chapter I
Chapter II 10.

I entirely concur in opinion with those Officers who object to the Exclusion of the Punishment of Flogging from the Code, as inflicted under the Madras Regulations. There is neither Danger nor Cruelty in it; and as pointed out by Mr. J. F. Thomas, it is a Punishment valuable from its Effect as an Example both when applied to the Case of the old Offender and the young Criminal. The Punishment of Banishment from one District to another should also, in my Opinion, be retained.

43. and 44.

These Clauses are defended by the Law Commissioners on the Grounds of Humanity and Policy. I consider them objectionable, as authorizing the Enhancement of the Punishment awarded by the Sentence; the Interference of the Government should be limited to the Mitigation and Remission of Punishment. Clause 43 appears to provide what is inconsistent with the Remark in Note A. that Transportation is to be in all Cases "for Life."

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This Provision would appear, as respects the Offender, indefensible, excepting where he is to be supported for Life at the public Expense; and it involves the Ruin of unoffending Heirs of the Criminal.

50

It appears impossible to estimate the Objectionableness of the Provision without seeing the Code of Procedure, in which, however, it would seem, by the Remark at Page 6, Note A, it will be attempted to "prevent gross or frequent Injustice from taking place." I do not think that any Vindication of the Rule is made out; and it appears to me to violate needlessly a Principle hitherto maintained in our Administration of Criminal Law.

60.

This Provision, as illustrated, appears to me to be a Refinement unsuitable to grave Legislation.

61.

I agree with Mr. Strange in his Remark on this Clause, that a Judge should be bound to make up his Mind as to the particular Crime of which he holds the Prisoner guilty; and that where Cases may arise not clearly defined or provided for by the Law, the Legislature is properly the Authority by whom the Deficiency should be supplied. Without the Rules of the Law of Procedure, the Illustrations to this Clause are not intelligible; but the Notion of finding a Man guilty of something, the Judge cannot exactly say what, the Evidence not being clear, is in my Opinion preposterous, and ill defended

defended by the Advocacy in the Note (p. 14) of "literal Truth." The Accused is entitled on every Principle of Justice to know precisely of what he is accused. Without this Knowledge he cannot defend himself. Moreover, the Principle of the Law of England, that the Prisoner is entitled to Acquittal where Guilt may appear doubtful is just as well as humane, as is also the Rule of that Law, that a Decision of guilty or not guilty of a specific Act should be passed. In this Clause appears Indication of that morbid Antipathy to the Law of England which I consider to mark the Code throughout. The Law Commissioners seem determined to adopt nothing from that Law; not even a Phrase. Their framing this Work so as to be in this respect original has in my Opinion operated its Deterioration.

I concur in Mr. Blane's Objections to this Clause. Here and elsewhere in this Code is assumed for the Judge a Power to discover what a Man "believes." It is sufficiently Evident that no human Tribunal possesses this Power. The Plea, as Mr. Blane remarks "might always be set up in excuse for the most illegal Acts."

I consider these Clauses unnecessary.

Here the Discovery of the Extent of a Man's Knowledge is supposed, as that of his Belief in Clause 62.

This Clause appears to me absurd, as well as the Illustrations of it.

I consider this Provision, as illustrated, to be quite out of place in a grave Criminal Code.

This Provision appears to me improper in it itself; but the Fourth Proviso, where the Acts mentioned are alluded to as within a Rule respecting Acts "done in good Faith for the Benefit of a" Child or Lunatic, betrays, in my Opinion, Obliquity of Understanding. The First Proviso is insulting to the Understandings of those to whom the Law is addressed. Illustration (f) is in my Opinion disgraceful to the Code.

I consider this Rule to be quite out of Place in a Criminal Code, and the Provisoes to indicate Contempt for the Intellect of those for whose Guidance the Code is framed, so also the Illustrations.

This Clause I think unsuited to grave Legislation; the Illustrations are melancholy.

Here it is supposed that a public Servant may be "legally competent" to commit an Offence. It is a Perversion of Terms, and calculated to mislead, and the Illustration (a) does not remove the Difficulty, and is of questionable Propriety. The Reference to "the Code of Criminal Procedure" prevents an accurate Appreciation of this Provision. The concluding Paragraph would be calculated to paralyze those Exertions in defence of their Persons and Property which this Government have sought to encourage among the Natives of this Country.

I consider Mr. Malcolm Lewin's Objections to this Clause to be deserving of Consideration; and I view the several Clauses on this Subject as open to Mr. W. Harington's Objection, namely, that they would tend "to deter from Exertion for the Protection of "Person and Property." It appears to me also that the Conditions enumerated are such as cannot be supposed to enter into the Contemplation of the Party assaulted. I regard the whole as a Piece of Legislation that savours of the Closet, and could not have emanated from practical Knowledge and Experience. The Sixth Proviso, in particular, affords an Instance of Refinement unsuitable in a Criminal Code, likely to be misunderstood, and if not misunderstood is of questionable Propriety.

This Clause, like 76, appears to me totally unsuited to real Life. Here, as in other Parts of the Code, I think that there are Traces of an Attempt to frame rather a Set of Rules to meet imaginary Circumstances, ingeniously contrived to fit every supposable Case, than a practical intelligible Law founded upon Experience and adapted to the Wants of Society.

This Clause appears open to the Objections stated by Mr. J. F. Thomas and Mr. Blane. The Fourth Restriction appears to me an Instance of over Refinement; and I think that the general Principle of these Rules respecting the Right of private Defence against Assault contrasts disadvantageously with the plain practical good Sense of the Law of England on this Subject.

This Provision appears to me unsuited to real Life, and quite out of place in a Criminal Code, intended to be acted upon. It supposes a Man, under such Circumstances, to calculate the Degree of Harm which he may inflict; and apparently it permits him to inflict any Harm, eventually causing Death, though not Death itself. I think the Clause absurd.

I concur in Opinion with Mr. Blane as to this Clause, which could not, I think, have been proposed by Persons of practical Experience.

I think this Clause quite out of place, and the Illustrations puerile and of questionable Propriety.

This Provision appears to me an Instance of over Refinement, and in Principle of doubtful Propriety.

I consider this a dangerous Provision, and open to Mr. Blane's Objection, as well as to the general Observation that we cannot know what a Man does or does not believe in good Faith.

I am of opinion that these Rules on the Subject of Abetment are altogether less worthy of Adoption than the Provisions of the Law of England respecting Principal and Accessory; the latter are clear, simple, not liable to be misunderstood, and founded on

intelligible Principles and the Events of real Life, no Part of which Description is applicable, in my Opinion, to these Provisions.

86. According to the "Explanation" a Person may aid "the doing" of a Thing "not done."

87. This Clause verges on the unintelligible.

88. The Remarks of Mr. M. Lewin, Mr. F. N. Maltby, Mr. Blane, and Mr. Strange, on this Clause, seem to me to merit Consideration. The Inconsistency pointed out by Mr. Blane between Clauses 88 and 90 appears obvious.

89. Of this and the similar Rules in the Code I would observe, that in my Opinion the Rule of punishing for the greater of Two or more Offences only is preferable.

90. As observed by this Clause, the Addition of bribing is made to reduce the Punishment to One Fourth of that for Instigation without bribing, under Clause 88, unless it is meant that this, as well as Clause 91, contemplates only Offences not committed; but the "Illustration" to Clause 90 is against this Supposition.

91. This Clause appears open to the same Remark as Clause 90.

93. I consider the Rule in the English Law, by which the Offender here would be considered a "Principal," and so dealt with, preferable to this Provision.

94. I adopt Mr. J. F. Thomas's Objection to this Clause; I think also the Provision needless.

95. This Provision, as illustrated, appears to me an Instance of over Refinement. I consider the general Provisions of the English Law respecting an Accessory before the Fact to provide sufficiently for all Cases of this Description, and to be preferable to Rules by which it is attempted to define every Instance of Abetment.

96. For the Reason stated in the last Remark, I would strike out of the Code all Provisions of this Kind. In the Illustration it appears that the most detestable Description of Murder may be punished by "rigorous Imprisonment for Life." If Death is to be the Punishment of Murder at all, it should be so in every Case of Murder by Poison.

97. Mr. J. F. Thomas proposes an Alteration of this Clause. I would, as above stated, omit it. In the Case in the Illustration (a), A is a Principal; in (b), A is an Accessory before the Fact; in (c), A is supposed "previously" to abet by Non-interference a Robbery in the Course of Perpetration. This is to give to Words a Meaning not their own.

98. I concur in the Objections of Mr. Blane, Mr. Strange, and Mr. F. N. Maltby on this Clause. It is manifestly impossible to determine whether or not a Man considered an Offence "likely to be committed." I think that such a Provision as this can be accounted for only on the Supposition that the Indian Law Commissioners think that the best Mode of Criminal Legislation is to define every imaginable Act that can be an Offence; whereas, on the contrary, it appears to me that by attempting to do this there is Danger of leaving Offences unpunished, and that to provide, as in the Law of England, a general Rule, to be applied on Principles of Common Sense, and according to the Laws of legal Interpretation, is a far preferable Method.

99. This Clause, I think, exhibits Refinement bordering upon Unintelligibility, totally out of place in a Criminal Code, and so worded that the Meaning would escape Discovery without the "Illustrations" I will here remark, that so far from considering "the Illustrations" to reflect Credit upon this Work, I am of opinion, that the Necessity for them is a grave Objection against the Manner in which the enacting Clauses are expressed.

I would of course strike out this Provision. The Illustration (a) shows, that what is intended might have been provided for by a few simple Words. I must protest against a Phraseology unintelligible by the Commonalty. Such Attempts at perfect Accuracy and "literal Truth" may well enhance our Approbation of the Language of Blackstone, happily adopted by the Compilers of the Regulations of 1802.

101. I concur in Mr. M. Lewin's Remark on this Provision. I do not see how the Officer's Knowledge of the Design to commit an Offence is to be proved.

103. This appears a "rugged" Definition of an Accessory after the Fact, the Provisions of the Law of England regarding whom I would substitute for the remaining Provisions of this Chapter.

Chapter V. 109. The Condition of owing Allegiance to the British Government ought, I think, to be added here.

111. Mr. Blane would extend this Provision to all constituted Authorities. As it stands, it appears to me to be a strange Provision, with inadequate Penalty.

113. I agree with those who consider this Clause to be "wholly indefensible."

115. Mr. James Thomas offers a pertinent Objection to this Clause.

Chapter VI. Mr. F. N. Maltby offers an important Suggestion on the Subject of this Chapter.

119. A Distinction seems here to be made between Mutiny and the Offence of assaulting a superior Officer; but I do not see on what Grounds.

105. The Illustration to this Clause appears to me to be a strange Instance of "previously" abetting.

Chapter VII. Mr. J. F. Thomas offers important practical Remarks on the Provisions of this Chapter.

27. Mr. Blane's Remark on this Clause appears to me just.

30. This Provision is not intelligible without the Code of Procedure.

I think this Clause open to Mr. Pelly's Objection.

Mr. James

- Mr. James Thomas offers Objections to this Clause, and would omit the rest of the Chapter. I think these would be better omitted than retained. Mr. J. F. Thomas also shows, in my Opinion, the Inexpediency of these Rules. Other Gentlemen go into detail, and expose objectionable Parts of this Chapter. I concur, generally, in their Views. I hope that no such Provisions will be enacted in this Country. The Power of Government to dismiss from Office, and of the Home Authorities to dismiss from the Service, with General Rules such as are contained in the Regulations, render such Provisions as those of this Chapter uncalled for. Chapter VIII. 138.
- Mr. Blane suggests an Addition to this Clause, which seems desirable, if it and the other like Provisions should be enacted; but I am of opinion that General Rules, such as the Regulations contain for the Punishment of Contempts and Resistance to Process, are far preferable to these wordy Provisions, which, like others in the Code, attempt to define all Acts falling within the Scope of the Chapter. Chapter IX. 153.
- The Provisions of Section VII. Regulation III. of 1802, and of the Act No. XV. of 1835, which compel the Party to Obedience, are preferable, in my Opinion, to the allowing a Man to defeat the Ends of Justice at a certain Sacrifice of Liberty or Money. The same Remark applies to succeeding Clauses. 159.
- I do not perceive the Object of this Provision, as not including false Evidence. 162.
- I think that in the Cases here contemplated the Punishment should be for the Contempt, and Obstruction of Public Officers, and not for Annoyance to another Party. 163.
- This Clause is too wordy, too particular, and the Provisions here and elsewhere for punishing "Annoyance" appear to me objectionable. The Term is too vague to be properly used in a Criminal Law. 164.
- This Provision appears to me to be open to enormous Abuse, and in the Case of lower Native Officers would lead to false Charges. 179.
- The Principle of this Clause appears to me of doubtful Propriety, and the Penalty too severe. It is calculated, I think, to lead to much Abuse. 181.
- The Intention of this Clause appears good; but I think it badly worded. Power to remove Nuisances should be given. I object to punish for causing any "Annoyance," Risk of Annoyance, or Risk of rioting. 182.
- I think this Provision liable to great Abuse. Threats are often Effusions of Passion, unattended with any formed Intention of Wrong. 184.
- Mr. Pelly remarks on this Clause. It appears to me to be over Legislation, as does the greater Part of this Chapter. 186.
- In this Clause the Mention of the Tribunal or Officer to whom the Evidence is given appears to be purposely omitted. I do not see why the Word "Perjury," which is perfectly intelligible to the People of India, and has been so long in use, is discarded. With reference to the Illustration (C), I think the Propriety of empowering an Ameer, deputed on a local Inquiry, to take Evidence on Oath, is questionable. Chapter X. 188.
- This Clause appears to me an Instance of a Definition, not intelligible in itself, which is required to be made so by "Illustrations." I object to all such Definitions in a Penal Code as above stated. 189.
- The Note to this Clause, at the Bottom of the Page, shows that where Death may be caused by false Evidence the Punishment is to be Capital. So important a Provision should be expressly enacted, and not be left to be collected from the Rules on the Subject of "Voluntary Culpable Homicide." I am, however, of opinion that more Harm than Good would follow such an Enactment. I assent to the Observation on this Subject, that "few honest Witnesses would venture to give Evidence against a Prisoner tried for his Life, if thereby they made themselves liable to be prosecuted as Murderers." 191.
- The Note to this Clause refers us to the Head of "Abetment" for Subornation of false Evidence; so that I conclude, under Clause 88, One instigating to Instigation of the Offence made Capital by the Law, as pointed out in the Clause immediately preceding, is to suffer Death also. A Charge of having instigated to Instigation of false Evidence it would be difficult to try satisfactorily; but its being a Capital Crime under any Circumstances appears to me indefensible. 192.
- This Provision appears to me very severe. Mr. J. F. Thomas proposes to extend it; but I would not. I agree with Mr. Strange in thinking that the Offence described in Clause 194 is more serious than that described in this Clause. 193.
- I am not aware in what Cases this Species of Evidence is admissible; but if it is to be placed on the same Footing as other Evidence, I do not see why the Falsehood should be less punishable than other false Evidence. 197.
- Mr. J. F. Thomas proposes to extend the Operation of this Provision; but I am of opinion that the Rule of our Regulations is preferable, which gives to the Civil Court the Power to fine and imprison in such Cases. 196.
- With reference to this Clause, I would leave Contempt of Court punishable, as at present, by the Court. I do not think it a proper Subject of Criminal Procedure. The Power of vindicating its own Authority is indispensable to the due Discharge of the Functions of a Court of Justice. 197.
- I think this Clause too severe. Indeed I do not see any Necessity for such a Provision. 199.

204. This Provision and Clause 205 do not appear consistent with the Statement in Note A, Page 2., that Transportation is always for Life.
- Chapter XI. 208. Mr. Bannerman suggests an Addition to this Clause. I prefer the Provisions of the Regulations on this Subject to those of this Chapter. The former have not been found insufficient, and are less severe than those here proposed. I agree with Mr. Casamajor in his Remarks on this Subject.
212. I think, with Mr. Casamajor, that this Provision would cause great Vexation and Injustice.
215. I think that this Provision requires the Addition proposed by Mr. Casamajor.
216. I also assent to Mr. Casamajor's Remark on this Clause.
- I think that the Alteration in this Provision proposed by Mr. Casamajor would be a great Improvement.
- 219.
220. This Provision appears to me to be too severe.
221. Here an Offence of less Magnitude than that described in Clause 220 is made equally punishable.
223. I do not perceive why this Rule is restricted to the Intention of causing Loss to Government; and I am of opinion, generally, that a separate Chapter for these Frauds is not needed.
- Chapter XII. It appears to me that this Chapter is needlessly long, the Provisions too minute, and the Punishments arbitrarily fixed, without due Reference to different Degrees of Criminality.
- Chapter XIII. By Clauses 254 and 255 the same Punishment is provided for Offences of different Magnitude.
- Chapter XIV. I think Clauses 264 and 265 too severe, and I am not satisfied of the Necessity for this Chapter. Clause 269, in its Reference to the Belief of the Party, becomes so far nugatory.
- Chapter XV. I refrain from a particular Examination of this Chapter, which I consider to be open to the serious Objections advanced in the Returns before this Court. I have only to remark, with respect to Clause 275, that the Punishment appears quite inadequate in the Case of polluting a Place of Worship with a Political Object such as is supposed to have existed when the several Mosques were so treated in these Territories.
- Chapter XVI. I agree with those Gentlemen who consider that the Word "intentionally" should follow the Word "Territories" in Clause 287.
- Chapter XVIII. 294. I do not perceive the Necessity for the several novel Designations of Crime adopted in this Chapter; and with regard, generally, to the Provisions for Homicide, I am of opinion that the Law of England on this Subject suffices for all practical Purposes, and is every way preferable to the Refinements of this Code. It appears from Clause 295 that all the Cases put in the Illustrations to Clause 294 are to be deemed "Murder." Is it to be imagined that a Conviction of Murder could properly take place on the Charge supposed in Illustration (b)? Here, as elsewhere, the Law Commissioners suppose the Power of discovering Intentions, and so making an Act, otherwise indifferent, a Crime. How infinitely more just and wise is the opposite Principle of the Law of England, that from the Nature of the Act the Intention shall be inferred. By that Law "all Homicide is Murder, unless when justified " by the Command or Permission of the Law, excused on the Account of Accident or " Self-preservation, or alleviated into Manslaughter by being either the involuntary Con- " sequence of some Act not strictly lawful, or, if voluntary, occasioned by some sudden " and sufficiently violent Provocation." I have already noticed the Case supposed in the Illustration (d). The Law Commissioners have not entered into the Question of the Effect of such a Rule in deterring the honest Witness from giving Evidence; but it is a very important Consideration, and in this Country the Provision for making this Perjury Capital would involve the Danger of Conviction of such Perjury upon false Evidence. A new Door would thus be opened for Conspiracy. In the Illustration (e) a Crime is supposed to be committed in a Jungle, no one being present but A. and Z., and it is supposed that a Court can convict the latter of causing the former's Death by leaving him; but if he pleads that his Companion was taken ill, and he could not carry him, &c., &c., or, in short, if he does not confess that he left him without sufficient Cause, how is he to be convicted? In the Illustration (f) A. is supposed to murder a Child of whose Existence he was not aware in a Manner not shown to be possible. In (g) it is supposed that a Court could convict a Man of Murder for illegally omitting to procure for Z. Medical Advice, Z. being wrongfully confined by A., who is, therefore, legally bound to supply Z. with what is necessary to prevent Z's being in danger of Death. I find it difficult to speak in measured Terms of such Legislation as this.
295. The Second Condition in this Clause appears to me to be inadmissible on any sound Principle of Legislation.
297. The Definition of Manslaughter in the Law of England appears to me preferable to this; there it is clear and distinct; here it is vague, and liable to Diversity of Interpretation. The Illustration (d) contradicts the English Law, which I prefer. In (e) it would seem that A. must have prepared a Knife in anticipation of B.'s being enraged by Z.'s Blow. The Illustration (f) seems an odd Instance of Manslaughter.
298. I consider this Provision totally indefensible. It appears to me to be no Alleviation of Homicide that I have another's Consent to kill him. Of the Illustrations, (a) is hardly a fair Illustration; (b) supposes a Case that will probably never occur; (c) makes A. guilty

guilty of Murder by a false Statement to Z., which induces Z. to kill himself. This appears to me confounding Things utterly different. The Court is to hang A. for the Deed of Z.

This is a remarkable Instance of a Definition intended for popular Use. It is not particularly intelligible, nor made so by the very peculiar "Illustrations." As observed by Mr. Blane, the Natives of India could never understand the Subtleties of this Part of the Code, nor, in my Opinion, those of any other Country. The Restrictions of the Code upon the Right of private Defence seem little suited to encourage among the People of India a manly Spirit or energetic Resistance to the Attacks of Robbers.

To this Provision I prefer those of our Regulations, which define the grounds for mitigating the Capital Punishment.

This Provision appears to me too severe.

The Case here supposed I consider Murder, which it is according to the Law of England.

I do not understand the preceding Definition of this Offence. I have not overlooked the Explanation given in the Note (m); but it appears to me that neither to "Notes" nor to "Illustrations" should it be necessary to resort for the Meaning of a penal Provision. I regard this particular Instance of novel Legislation as a needless and inconvenient Refinement, not calculated to have any beneficial practical Tendency, but to bewilder and confound any who might desire to shape their Conduct by it.

The Offence here provided for would, I think, fall more properly under a general Provision for Manslaughter, the Definition of which in Clause 297 is defective as well as objectionable, for the Reasons above stated, and should include involuntary Homicide, the Effect of the Conduct described in this Clause.

Neither this Clause nor its Explanation is easy to be understood. The "Illustration" would seem to make Attempt at Rape "rash or negligent" Act, and the Perpetrator killing the Woman in this Attempt is made liable to "not more than Sixteen Years Imprisonment" nor less than Two Years Imprisonment. It appears to me that this is a Violation of all sound Principle, besides being inconsistent with the Definition in Clause 304. The Act described is apparently taken not to be Murder because the Perpetrator killed the Woman by the illegal Act or Omission of attempting to ravish her. By the Law of England it is Murder, and so it ought to be, in my Opinion.

This Clause would seem to require a new Definition of "Suicide," which cannot be committed by an insane Person. I agree with Mr. J. F. Thomas, that the Punishment provided in this Clause and in Clause 307 is excessive.

I agree with Mr. James Thomas that this Clause and Clause 309 are "not clear enough." I cannot perceive the Necessity for either of these Provisions; and, as already observed, I object to any penal Enactment the Meaning of which is beyond the Reach of ordinary Capacity.

This Court has been advised of the Governor General's Opinion that Transportation ought not to be adjudged to Thugs.

The Remarks of Mr. J. F. Thomas on this Clause appear to me to deserve Consideration.

This Clause is open to the Objection of giving to a Word a Meaning not its own.

I consider this Clause as marked by needless Particularity; it is a Part of the System adopted in this Work, to which I have stated my Objections, of attempting to define every possible Act of Criminality. Mr. J. F. Thomas points out Omissions in the Specifications which are Instances of the Mischief of the Principle. The Provisions connected with this Clause appear to me also to overload the Code with unprofitable Verbiage in Amplification and Particularization quite uncalled for. I allude to the Clauses to 329 inclusive.

This Part of the Code appears to me to be over Legislation. The Illustrations are remarkable for a perverted Ingenuity, not unfrequently displayed in this Work. Voluntarily causing a Man to believe a Dog savage who is not savage, and threatening to set him at the said Man, so preventing the Man from going along a Path, does not appear a very simple Description of wrongful Restraint. To the Clauses which follow to 33 inclusive I prefer the English Law of "false Imprisonment."

I cannot bring myself to suppose that a Definition so artificial as this will be adopted in preference to the Sort of Definition of Assault and Battery used in the Law of England. It would be easy to turn it into Ridicule, and is fit to make a Code ridiculous, for the sake of maintaining "literal Truth," in which it might be a Question whether or not the Law Commissioners have succeeded. Common Sense appears to me to be sacrificed. Such a Provision as this and the like is dearly bought at such a Price.

It would require an Army of Magistrates to dispose of the Complaints invited, as it were, by the Illustrations to this Clause, which, moreover, seem below the Dignity of Law.

Mr. J. F. Thomas shows why this Provision and Clause 352 should be struck out of the Code. I do not perceive why special Provision for "Assault" should be made in Clauses 343 to 345 inclusive.

I am of opinion that in many Cases a Sentence of Seven or Four Years Imprisonment would not be excessive for the Act herein provided for. The rest of these Clauses might, I think, advantageously be omitted (to 352 inclusive). Such Particularity appears to

me uncalled for.* The nice Distinctions on the Subject of Kidnapping appear to me unnecessary.

359. Mr. J. F. Thomas shows why this Clause should be modified, with reference particularly to the immature Age at which Marriage is contracted in India.

360. I think that less than Seven Years Imprisonment should not be awarded for Rape.

361. The Definitions in the Law of England appear to me preferable to those in this Clause and in Clause 362.

Chapter XIX. 363. The Definition describes an Attempt at that which is Theft by the Law of England, and I do not see any good Reason for the Alteration, involving the Abandonment of a Definition to which the People of India have long been accustomed, and perfectly understand. "The felonious taking and carrying away of the Personal Goods of another" appears to me a preferable Definition. The Illustrations (a) and (b) are not Instances of Theft according to any Code that I have seen; (m) appears to me questionable; (u) absurd; (y) bad; (z) worse.

361. For Theft according to the Law of England, involving the taking away of Property a larger Punishment than is here provided might be adjudicable.

365. With reference to this Clause, I agree with Mr. J. F. Thomas that a Distinction should, be made between Houses of different Descriptions.

368. The First Part of this Definition appears to me to describe Robbery. I think that special Clauses for the Cases described in Clauses from 370 to 374 inclusive are unnecessary.

375. The felonious and forcible taking from the Person of another of "Goods or Money to any Value, by Violence or putting him in fear," the Definition of Robbery in the Law of England, is, I think, preferable to the Definition given in this Clause.

376. To this Definition I prefer that of Robbery by open Violence in the Regulations; and I think, that Three or more Persons should suffice for the Commission of the Crime.

377. The Punishment ought not, in my Opinion, to be less than Seven Years Imprisonment; so also in Clause 379.

380. Here I would make the minimum Transportation.

386. This is a needlessly wordy Definition in my Opinion. The Addition to the Rule proposed by Mr. Blanc may deserve Consideration.

389. The Aggravations of Theft and receiving stolen Goods, recognized in Regulation VI. of 1822 of the Madras Code of Regulations, are proper, and should be provided for, in my Opinion.

392. This Clause is needlessly artificial, in my Opinion. The Illustration (k) appears One of those subtle Refinements which so generally deform this Work.

393. I would strike out this Provision as unnecessary.

399. It appears to me that the Provisions for Mischief, extending through Nineteen Clauses, might advantageously be comprised in One simple Provision.

I think this a bad Definition with reference to the Illustration (u). I think walking into a Building is ill described as exercising Dominion over it. So also of other Illustrations. The Definitions which follow of various Sorts of Trespass might, I think, be dispensed with.

423. I see no Necessity for so elaborate a Definition of Housebreaking; and for all the rest of this Chapter One Section, after the Manner of our Regulations, with about Three simple Clauses in it, might, I think, be substituted with Advantage. I agree with Mr. Strange, that in these and the like Provisions, whatever is gained in critical Accuracy of Arrangement is risked in Practice, "by attempting to legislate separately for what in effect are integral Crimes." As he remarks, to punish a common Act of Burglary, besides making reference to Definitions, recourse must be had to Four different Clauses thereof which are far removed from the Fact; and an Account must be summed up before it can be ascertained to what Punishment the Burglar may be sentenced.

Chapter XX. 441. To this laboured wordy Definition I prefer the English One of Forgery, namely, "the fraudulent making or Alteration of a Writing to the Prejudice of another Man's Right."

443. Offences very different in Criminality are here brought together, and the special Provision for any of them I consider unnecessary.

444. I agree with Mr. J. F. Thomas in opinion as to this Clause and Clause 449.

450. I think this Clause objectionable, and much of this Chapter might, in my Opinion, be omitted with Advantage.

Chapter XXI. I think this Chapter an Instance of over Legislation.

457. This Clause appears to me obscure and otherwise objectionable.

Chapter XXII. In this Case the Party should be made to restore the Property. I think this Chapter not justified by the Note (o), and I would omit it.

460. I shall offer no Remark on Chapters XXIII. and XXIV., on which there are pertinent Comments in the Returns.

Chapter XXV. I am decidedly of opinion that the Omission of this Chapter is more advisable than its Retention in a Criminal Code for this Country.

469. The Explanations here are highly artificial; out of Place in a Criminal Code; the Definition an over Refinement; the whole calculated to do Harm rather than Good; to

lead to groundless Prosecutions, and to involve the Tribunals in Investigations tending to no practical Advantage.

Important Comments on this Clause are offered by Mr. J. F. Thomas. I would not carry the Principle of Legislation on this Subject further than it is carried in England. The Rule of English Law appears to me more suited to the Dignity of the Administration of public Justice than the Principle of the Law of this Code. I consider that it is fit that a Distinction should be made between the Redress by private Civil Action and by Criminal Prosecution, and that much falling within the Scope of this Rule belongs to the Departments of Civil and not Criminal Justice. The Limitations on the Right of Action, according to the Law of England, are, in my Opinion, wise. I would not, as here, open the Door to all the angry Passions of Mankind, and perpetuate ill Blood, when the Offence might otherwise be forgotten. The Libel punishable should be such only as is malicious, and intended to provoke to Rage or expose the libelled to public Hatred, Contempt, and Ridicule. I deprecate the Enactment of all or any of the Contents of this Chapter.

70.

I question the Expediency of this Chapter altogether.

I consider this Clause quite preposterous, and I entirely concur in opinion with those Gentlemen who recommend the Omission of it, and of the Two Clauses which follow. The Second Paragraph of the Explanation to Clause 485 is not very clear. The Illustration (c) seems to suppose the Absence of the Power of punishing for Contempt of Court. The Enactment of the Provisions of this Chapter, among other mischievous Consequences, would bring the Administration of Criminal Justice to a Stand, The Magistrate would in vain attempt to dispose of the Work which these Provisions alone would probably create.

Chapter XXVI
485.

In conclusion, I agree in opinion with Mr. J. F. Thomas that the proposed Penal Code is not level with the Intellect of those who would be called upon to administer it; that it is objectionable, from over Legislation and Refinement, and dangerous Novelties; but I cannot go with him in desiring its early Promulgation, with the Modifications which he suggests. On the contrary, I am of opinion that the Vices of its Style are incurable by any such Alteration; that the Principles on which it is framed are very exceptionable; that from the Code is omitted much contained in our Regulations which ought not to be omitted; and that the Remark of Mr. Strange, upon the Effect of the separate Legislation for Acts which are integral Crimes, is sufficient to show that our Criminal Courts could not work with this Code; their Hands are full already; they have no spare Time to employ in unravelling the Complications of such an Enactment.

It appears to me that much of the objectionable Character of this Code is traceable to the Determination of the Indian Law Commissioners to set aside altogether all existing Laws on the Subject; a Proceeding which appears to me at variance with the Intention of the British Legislature, as declared in Section 111, 3d and 4th William IV. Cap. 85.

(Signed) W. HUDLESTON.

Enclosure 3. in No. 78.

MINUTE of the Third Puisne Judge of the Court of Foujdaree Udalt on the proposed Penal Code, dated the 11th of December 1839.

1. The pressing Duty of passing Judgment on urgent Criminal Trials, and other constant official Avocations, deprive the Judges of this Court of any uninterrupted Leisure, without which it is impossible to take an extended View of the very many important Questions arising out of the proposed Penal Code. I have been able to examine it only at Intervals, and my Observations on it are, in consequence, necessarily imperfect and desultory.

2. The Paper with which we have been favoured by our former Register, Mr. J. F. Thomas, previously Judge in Tanjore, an Officer of practical Experience, possessing an extensive Knowledge of the Languages, Customs, and Habits of the People, contains so much expressive of the Opinions I myself entertain, that, deeming it unnecessary to repeat what he has already so well expressed, I would commence by adopting *verbatim* that Portion of his preliminary Observations which is contained in Paragraph 2, the First Part only of Paragraph 3, Paragraphs 4, 5, and 6 (the last referring particularly to myself), Paragraphs 7, 8, 9, 11, 12, 13, 14, 15, and 19.

3. Until the Mode of administering the Law is clearly defined, it is impossible to bring it into useful practical Operation, or to pronounce *satisfactorily* on its probable Results. I therefore concur with the Second Puisne Judge in thinking that the Want of the Code of Procedure is an insuperable Objection against the *legislative* Promulgation of the proposed Penal Code, and a serious Obstacle to the critical Examination of it.

4. I also am of opinion, with him, that many Parts of the Code are drawn in Terms which cannot convey any Meaning to the Minds of the People for whose Guidance it is framed. In attempting comprehensive and precise Definitions in the English Language, not only Perspicuity has been frequently sacrificed, so as to confer on Words a Sense irreconcilable with their established Meaning, but a "rugged and intricate Phrascology"

has been introduced, which is not easily intelligible even in the English Language, and is absolutely untranslatable into any of the Dialects of the Country with which I am conversant. Novel and refined Ideas, beyond the common Grasp of Native Intellect, are often enunciated in unusual and far-fetched Terms, and illustrated by artificial Examples, frequently familiar to Europeans alone, which will leave the Native Mind quite as blank as before they were penned.

5. It will be no easy Task, for instance, to convey, in any of the Native Dialects, the Meaning even of No. 42, which merely declares that "to do a Thing" denotes *Omissions* as well as *Acts*; for in every Language "to do" must stand opposed to its Omission. "As our Definitions are framed," say the Law Commission, "it is *Theft* to dip a Pen in another Man's Ink, *Mischief* to crumble One of his Wafers, an *Assault* to cover him with a Cloud of Dust riding past him, *hurt* to incommode him by pressing against him in a Carriage" (Notes, Page 18); and this leads to the Enactment No. 78, by which it is declared that nothing is an Offence the Harm involved in which is so slight that it would not *ordinarily* be complained of. Surely some Defect in the Definitions themselves must have induced the grave Enunciation by the Law of so very self-evident an Axiom; and when the Law Commissioners penned it, and the foregoing very remarkable Criticism on the Result of their own Definitions, One can hardly refrain from thinking that Suspicions on this Subject had arisen in their own Minds.

6. But the strongest Objection which I entertain against this Code is its being professedly based on *theoretical*, not *practical*, Principles. It is the Work of eminent Men, selected for their known Ability, but few of whom possessed any, and none long or intimate Intercourse with the People, at least in these Territories. Talent,—reasoning on superficial, still more on fallacious Information,—is most liable to leap into erroneous Conclusions, which are only the more dangerous in proportion to the Respect due to the Authority whence they emanate; and when it is considered that nothing distinguishes the Natives of India so much as their extraordinary Tenacity to ancient Custom, and that the most opposite Nations in Europe do not differ more from each other than do some of the Indian Nations under the Madras Government for whom this Code is compiled, in common with Mr. Frere and others, I seriously lament that the Law Commissioners did not more avail themselves of the practical Results of that accumulated Knowledge and gradual Experience which is embodied in the Laws of the eminent Men who have hitherto legislated for the different Nations of India, instead of suggesting a theoretical Code for the Mass indiscriminately, regardless of local Peculiarities; for the best and wisest of Laws will become a mere dead Letter when they prove at variance with the Feelings and established Habits of the People.

7. I likewise concur with the Second Puisne Judge as to another Defect that pervades the new Code. It is One of the First Principles of Law that there can be no Offence where "Intent" is wanting; but, on the Ground that no safe Judgment can be formed by Third Persons of the mental Operations of any Individual, known to himself and God alone, except by his own overt Acts, the Law hitherto in most Cases has presumed that Effect to be intended which the Act of any Individual in itself is naturally calculated to produce. This Intention, however, as it cannot be proved by Evidence, is generally *inferred* from the Act, which Act alone is given in Evidence, and the Crime at present is composed of such Act *exclusively*, no Proof being required of the Intent distinct from the Circumstances attending the Act itself. The new Code, however, independent of and in addition to such overt Act, often makes the "Intention," "Impression," "Belief in good Faith," "Knowledge," not of Fact but of what is "likely," and other *mental* Operations of the Individual, no longer merely inferrible from the Circumstances attending his Act, but an essential, independent, separate, and component Part in the Definition of the Crime itself, *without which* the mere overt Act in such Instances will, according to the Code, become *no Crime at all*. To establish Crime, under these new Definitions, there will occasionally be required, not only Proof of the Fact, as at present, but, further, Proof (of which none can be had) of these specified Operations of the Mind, hitherto left to Inference, but now forming a substantive Part of the Offence as newly determined. I need hardly say that this seems to me, not only a radical Defect, but an insuperable Obstacle to the practical Introduction of the Code.

8. I am compelled to join the Second Puisne Judge, and indeed every Officer in the Interior of practical Experience, either in the Magisterial or Judicial Department, whose

NOTE.—The following are the Persons punished by flogging in the Madras Territories.

1825	By the District Police	- - -	5,084
"	Magistracy	- - -	613
"	Criminal Court	- - -	27
"	Circuit do.	- - -	—
"	Fouj. Udalt do.	- - -	—
1826	By the District Police	- - -	2,759
"	Magistracy	- - -	345
"	Criminal Court	- - -	18
"	Circuit do.	- - -	—
"	Fouj. Udalt do.	- - -	1
1827	By the District Police	- - -	2,270
"	Magistracy	- - -	852
"	Criminal Court	- - -	16
"	Circuit do.	- - -	—
"	Fouj. Udalt do.	- - -	—
1828	By the District Police	- - -	1,686
"	Magistracy	- - -	717
"	Criminal Court	- - -	2,128
"	Circuit do.	- - -	160
"	Fouj. Udalt do.	- - -	9

Opinion is of any Value, in protesting against the Abolition of flogging as a Punishment. Indeed this is One of those dangerous theoretical Suggestions, at variance with the Laws of the wisest Men that ever governed India, which have no other Origin than the most misdirected Humanity, acting on the most deplorable practical Ignorance of the People. The Lash has long been confined by our Regulations to those Criminals alone of the degraded Classes who are proper Objects of so ignominious a Punishment, and flogging, as shown in the Margin,

was

Regulation XIII. of 1832 was now beginning to operate. See next Note.

1832. By the District Police	107
" Magistrate	220
" Criminal Court	746
" Circuit do.	306
" Fouj. Udalt do.	25
1835. By the District Police	13
" Magistrate	151
" Criminal Court	207
" Circuit do.	151
" Fouj. Udalt do.	13
1836. By the District Police	14
" Magistrate	171
" Criminal Court	233
" Circuit do.	146
" Fouj. Udalt do.	2
1837. By the District Police	144
" Magistrate	207
" Criminal Court	604
" Circuit do.	71
" Fouj. Udalt do.	16

Extract from Paragraph 22. of Sir Thomas Munro's Minute dated 21st December 1834, being Appendix No. 103. to the Report of House of Commons in the Revenue Department of 1832.

With what Grace can we talk of our paternal Government if we exclude them from every important Office, and say, as we did till very lately, that in a Country containing 15,000,000 of Inhabitants no Man but a European shall be intrusted with so much Authority as to order the Punishment of a single Stroke of a Baston? Such an Interdiction is to pass a Sentence of Degradation on a whole People, for which no Benefit can ever compensate. There is no Instance in the World of so humiliating a Sentence having ever been passed upon any Nation. The weak and mistaken Humanity which is the Motive of it can never be viewed by the Natives as any just Excuse for the Disgrace inflicted on them, by being pronounced to be unworthy of Trust, in deciding on the petty Offences of their Countrymen. We profess to seek their Improvement, but propose the Means the most adverse to Success. The Advocates of Improvement do not seem to have perceived the great Springs on which it depends. They propose to place no Confidence in the Natives, to give them no Authority, and to exclude them from Office as much as possible, but they are ardent in their Zeal for enlightening them, by the general Diffusion of Knowledge. No Conceit more wild and absurd than this was ever engendered in the darkest Ages; for what is in every Age and every Country the great Stimulus to the Pursuit of Knowledge, but the Prospect of Fame, or Wealth or Power; or what is even the Use of great Attainments, if they are not to be devoted to their noblest Purpose, the Service of the Community, by employing those who possess them, according to their respective Qualifications, in the various Duties of the public Administration of the Country? Sir T. Munro when this was written had by Section IV. Regulation IV. 1821 recently given Power to Heads of District Police (who have been compared to the French Prefets of Provinces) to punish by Flogging. This Power was revoked by Regulation XIII. 1832 Section V. and they can since only inflict such Punishment by order of the Magistracy.

Flogged by the Magistracy in Malabar —	
1833	Three.
1834	Seventeen
1835	Eight.
1836	Four.
1837	Twenty-six.

Policy which, in the false Name of Humanity, confining its Benevolence to the Criminal alone, after limiting its Charity to feeding, clothing, and lodging in a Building which to the Native is comparatively a Palace none but the Convict, now proposes by Law to inflict upon the whole Body of the People the great Evil of relieving the lowest Classes from the Dread of the only Punishment which prevents their preying on the Property of their Superiors. Should such a Measure be legalized, the People, as I have had occasion to state is now the Case in regard to Sorcery on the Western Coast, will infallibly take the Law into their own Hands. Malabar, I believe, to be the only District in which Murder for Sorcery is usual, and in which Punishment for Theft, by Stripes, is most rare; and a few Days ago I passed Sentence of Death on a Murderer there, whose sole Motive to that horrid Crime was (for the First Time such ever came before me) the repeated petty Thefts which had been committed by the Deceased.

9. I now proceed to make such Observations as occur to me on the several Chapters of the Code.

10. Mr. J. F. Thomas, as well as Mr. G. Casamajor, has suggested an Addition to this Chapter, in modification of the *Exceptions* annexed to Clauses 107, 124, 177, 178, and 206, which are taken apparently from the French Code. Whether the Alterations be made here, or under these Heads respectively, I concur with them generally, as to the Expediency of narrowing in India the Law applicable to a very different social State in Europe, and of defining by express Specification the precise Exceptions from Punishment for the Harbour given to Offenders, particularly in reference to the wide Connexions of Caste, and to Families who, as he justly states, are here unhappily Criminals by Birth and Profession. I would confine it, in general, to the Husband and Wife, Children and Parents reciprocally, or, where Nepotism by the Female Side exists, as on the Western Coast of the Peninsula, (to the great Peculiarities of which no Attention what ever seems to have been paid in this Code,) to the Mother's Brother and Sister's Son also, who there stand to each other in the Relation of Parent and Child elsewhere.

11. With reference to the very early Age at which Females reach the Age of Puberty in India, it appears to me a Mistake throughout the Code to confound a Person "under Twelve Years of Age" with incapacitated Infancy. I make this Remark more especially with reference to Hindoo Widows, who are constantly married legally in Infancy, and left such before Consummation of the Marriage; and with reference to the Illustration (4) to Clause 298, which would render any one who causes the Sutte of such a Widow guilty

was here gradually reduced in Practice within such narrow Bounds that it was rather held in *terrorum* over than inflicted upon Criminals. But so long as we have the Misfortune to possess a thieving Population such as the *Chucklers* who are stationary, and other Tribes, such as the *Corchevurs* and *Lumbadias*, who, on the contrary, are wandering throughout our Provinces, and the *Kullers* settled in the South, the *Dundapees* in the North, and the Slaves in the Western Coast, it is the only Punishment of which the Dread will operate on a Class of Men whose Subsistence is so precarious as to render Imprisonment a Relief. Sir T. Munro, as a principal Means of raising the Character of the People generally in their own as well as in public Estimation, with a perfect Knowledge of the Native Character, and in the Spirit of true Humanity which peculiarly distinguished him, felt no Hesitation in liberally placing in the Hands of the superior Natives themselves the Lash, to be inflicted on their Criminal Brethren of the lowest Description, whom he, by Experience, found it practically impossible to control by other Means, and the far-extended Views which dictated this liberal Policy to Munro may well stand contrasted with the Policy of those, who, possessing neither his Information, Experience, or Grasp of Mind, undervaluing the inestimable Confidence of the higher Classes of the People, which he now, in return for the Trust he reposed in them, to a great Extent undid his Recall of "the most humiliating Sentence ever passed upon a Nation," and with the still narrower

of *Murder*, and liable to suffer Death, instead of voluntary culpable *Homicide* by Consent, as the Code clearly contemplates where the Widow is of an Age capable of giving free Consent.

Chapter II.
40

12. Besides flogging, as already stated, I agree with the Second Puisne Judge in advocating the Continuance of Banishment from one District to another as a Punishment highly effective, where, as in India, local Attachments are universal; and, as explained in my Minute laid before this Government on the 24th December 1838, I think with Mr. Vaughan and others that the ignominious Punishment of *Tusheer* should likewise be retained, as regards Forgery, Perjury, and Crimes against Nature.

13 The Frequency of unnatural Crimes in India remains a horrid Stain upon the Land; and Perjury and Forgery, which sap the Foundations of all Justice, are prevalent to an Extent loudly calling for even more severe Penalties than those now inflicted. If, under such Circumstances, the Legislature ceases to annex to those Crimes that Odium which the People of themselves unhappily scarcely affix to them, but which they immemorably attach to the disgraceful Punishment of *Tusheer*, and the Government no longer lend their powerful Aid in rousing popular Indignation against these Offences, a Blow will be inflicted upon Justice and public Morals such as will long be felt, but which it may be very difficult ever to remedy.

14. *Tusheer* is so far humane that it inflicts no Privation, Restraint, or physical Suffering on the Body. It is quite true, as urged by the Law Commissioners, that disgraceful Punishments of this Description act on the Mind alone, and upon the Criminal operate *unequally*, being worse than Death itself to the sensitive, and hardly felt at all by the hardened Villain, but an all-just and most wise Providence implanted this very Feeling in the Human Breast expressly in order to deter from Crime, the more in proportion as it is enjoyed, and the same Providence most righteously inflicts on its Possessors mental Retribution in exact Proportion as this Talent, most protective from Evil, is neglected or abused. Because Punishment is rightly inflicted on and felt by each Mind in the just Proportion which has thus been decreed from above, is it for Man to gainsay Almighty Wisdom? Instead of daring so to do, on, on such untenable Grounds, to throw aside as useless that Sensitiveness to Disgrace and Ridicule so wisely implanted more or less in every Human Breast, to deter it from Crime, Man, and more especially his Rulers, ought to wield for this Purpose the powerful Engine thus placed by Providence at their Disposal, and in lieu of morbidly sympathizing with Criminals who, by their Offences, have either perverted all Justice, or degraded themselves to the Level of the Beast, they should righteously inflict on each Retribution in proportion as he was armed against the Offence, and thereby not only deter but relieve the Mass of the People from those degrading Crimes, the contagious Corruption of which stains the Native Character with its blackest Dye,--Crimes, indeed, which have reached a Prevalence almost intolerable to Humanity, except to that apathetic Form of it, in which, fortunately perhaps for us, the Hindoo happens to be clothed.

15 To Clauses 43 and 44 not only the Second Puisne Judge but many other Officers in the interior object, I think on insufficient Grounds; for, under the Explanations given, Banishment from the Company's Territories even for Life, is plainly intended in mitigation not in enhancement, of the Sentences specified when passed on *Europeans*; and Transportation as regards *them* is not to be "perpetual." But though the Policy and Humanity of these Enactments seem to me vindicated, I doubt their *Impartiality*, and on this Point would direct Attention to the strong Opinion given by a Native, V. Seenavasaiah, Naib Seristadar in Chingleput, who, with reference to the Desire of the Law Commissioners "to save Englishmen of the worst Description from being placed in "degrading Situations, and engaged in the ignominious Labour of a Gaul equally with "the Natives of India," compares such Exemption with the Indulgence of the Hindoo Law in favour of Brahmins, "ridiculed by the European Nations" and concludes that "any Distinction made in the Punishment of Englishmen and Natives" will, instead of upholding, lower the British Character in the Eyes of the Public.

49.
50 to 57.

16 In the Remarks of the Second Puisne Judge on this Clause I concur.

17. I am glad to express my Sense of the great Excellence of much contained in these important Clauses, as explained in Note A. Page 5 to 11. The admirable Principle of involving Compensation to the injured in the Punishment of Crimes, especially of those against Property, is quite invaluable, for it strikes directly at the Root of the growing Evil which is the grand Outcry of the Land. The present free Enjoyment of the Fruits of Crime, except in the rare Cases where the stolen Property *itself* is recovered, holds out such Inducement to Offences against Property, by securing to the Perpetrators Possession of the Consideration which tempts them to break the Law, that One Half of the Population now prey upon the Industry of the other. Theft and Robbery form not only the most profitable but have gradually become the staple Trade of our Territories. Person and Property are equally insecure; the Accumulation and Outlay of Capital is checked; and these Offences against Property constitute the Bane to all Improvement or Prosperity of the Country. I therefore hail the proposed Enactment as a long-needed and most welcome Blessing, particularly if the Law of Procedure is, as promised, so framed, that "One Trial should do the Work of Two."

18. But

18. But I think this Part of the Code is open to many great Objections, urged by Mr. Sharkey, Mr. George Casamajor, and more especially Mr. Vaughan, whose Remarks merit grave Consideration.

19. As suggested by Mr. Casamajor, *Restitution* should be entirely distinguished in the Code from *Fine to Government*.

Restitution to the State of illegal Gains from Embezzlement, the Receipt of Bribes, and similar Offences, or *Restitution to individual Sufferers* of the Value of Goods stolen or robbed, of Loss by Forgery, or of Remuneration for Damage committed, is due out of the Culprit's *own Act*, proved in Evidence, which *clearly decides its Amount*; and in such Cases Justice never can be satisfied by any *limited* Imprisonment, until the illegal Appropriation, be its Extent what it may, has been *fully accounted for*, what is beyond the Convict's Power traced to others, all within his Possession or Control restored, and the Court is satisfied that his Means of repaying the Value of the Remainder are quite exhausted. Then only ought the Period of Imprisonment to be limited. But in Cases of *Restitution*, where the Money is due *by the Act* of the *Culprit himself*, it should be recoverable from him by Distrainment at whatever Time Means may accrue; and I see no Reason why the Period for its Recovery should be limited to Six Years only.

21. On the other hand, the imposing a Fine to Government is an Act of the Court itself over which the Culprit has no Control at all, and an Act of the Court not only fallible, but, as shown by the Law Commissioners themselves, peculiarly liable to Error and Inequality, Fine operating on the Rich hardly at all, but on the Poor most acutely, whilst Imprisonment, on the contrary, operates in the inverse Ratio, most severely on the Rich, and hardly at all on the Poor.

22. It seems unaccountably to have escaped the Notice of the Law Commissioners that it was the Impossibility of any Court ascertaining correctly the pecuniary Resources of Culprits, known only to the Individuals themselves, and not, as stated by them, any Desire to call the Culprit into Council with his Judges, which induced our own and most other Legislatures to equalize the admitted Inequality of the Punishment of Fine, by rendering it commutable, *at the Option of the Culprit*, for Imprisonment, to be fixed by the Judge, on the Ground that the Culprit who is unable or unwilling to pay in Purse shall possess the Option of paying, *in an inverse Ratio*, in Person; and that while the Disgrace of a Gaol will generally induce the rich Man to liquidate any moderate Fine rather than become its Inmate, he, as well as the poor Man, can satisfy Justice by incurring the *inverse* Penalty of Imprisonment, and both thus possess the Means of Escape from excessive Fine, inflicted either by an inconsiderate Judge, or by the most considerate Judge in Ignorance of their real Circumstances.

23. In Cases, therefore, of mere Fine to Government, where the Knowledge of the Court is so defective, and neither the Culprit's Act nor the Evidence gives any Aid to direct the Court's Judgment as to its just Amount, I know no better Remedy against Error and Injustice, involved in the admitted Inequality of Fine, than that above stated, upon which Mr. Livingstone seems to have founded his Enactment. Indeed, without some such Provision, I see no Means which the most just and considerate Judge can possess to guard himself against the Infliction of the most unjust and excessive Fines. Mr. Vaughan has clearly shown that the Option of Commutation, if given to the Judge himself, might become an Engine of the most serious Oppression in the Hands of the zealous but injudicious; and under these Sentiments respecting Fines to Government, I would neither sanction their Levy by the severe Process of Distrainment, nor leave them recoverable from Property acquired *subsequent* to the Offence, but deem the Imprisonment in lieu of them, which should ever be fixed by the Courts in the inverse Ratio of the Fine, as full Satisfaction for them.

24. But in Cases even of *Restitution* where Process of Distrainment might issue, I would, on the Ground of Policy no less than of Humanity, as suggested by Mr. Vaughan, exempt therefrom all Tools, except those for Housebreaking, Coining, or other Crimes, and all Seed Grain, Implements of Husbandry, and ploughing Cattle requisite for the honest Maintenance of the Culprit and his Family.

25. Experience, however, has shown this Court, that, under the present Law, strictly limiting Fine, it is absolutely necessary, to prevent the most gross Abuse and Oppression, notwithstanding our Regulations sanction the Imposition of Fines by the inferior Tribunals of their own Authority, to require, even from such of them as have the Benefit of being superintended by Covenanted Civil Servants, Returns of all Fines, in order to enable this Court to mitigate and revise unjust Sentences. Such a Proceeding, though here it works easily and beneficially, is deprecated as an Evil by the Law Commissioners (Note A. Page 7), who, in lieu of it propose (Note A. Page 6) "in the Code of Procedure to establish such a System of *Appeal* as may prevent gross or frequent Injustice from taking place." But in India, where the People habitually suffer Oppression, so often *in Silence*, Appeal will never be so efficient a Remedy as *Revision*, especially where sad Experience has shown the Necessity of the latter; and if Revision be necessary under a System of Fines strictly limited in Amount, it will be still more requisite should all Limit to Fine be removed, as proposed, which I think is open to insuperable Objection. On Examination, the Arguments of the Law Commissioners will be found to apply against Limitation chiefly to Cases of *Restitution*, which they,

they have wrongly confounded with Fine. As applied to Fine alone, when separated from *Restitution*, they will, on the contrary, be found to advocate Limitation; and all Experience is against granting an unlimited Discretion where even Power the most strictly bounded has in practice been found liable to monstrous Abuse.

61.
Note A. p. 14.

26. There is a vast deal of Plausibility in the Argument of the Law Commissioners on this Clause; but as it is the sole Duty of a Judge rightly to apply the Provisions of the Law to the Facts proved, it will be in the highest Degree dangerous to permit, on his Part, any Failure in that essential Duty. He should weigh all Doubts before he comes to a Decision, and then pronounce, according to the Law, a positive Verdict, pro or con. A Verdict in the Alternative is no Verdict at all. To find a Special Verdict, setting forth the real State of Facts, declaring that the Evidence did not enable the Court to decide on the Guilt or Innocence of the Party, would be quite as reasonable as a Verdict stating that the Evidence proved one or other of Two Crimes, the Court could not say which. I adopt, on this Subject, the Sentiments of the Second Puisne Judge, and in all Cases of such Doubt, giving the Prisoner its Benefit, I would convict of the minor Crime alone. Indeed, in Note N. Page 77, the Law Commissioners themselves show that in such Cases it is infinitely more important to determine what shall be the Punishment than the Name of the Offence; but as the Punishment must depend on the Nature of the Offence, in a Case of Doubt it is better to give the Preference to the minor Punishment than to stultify the Court by obliging it to give a dubious Verdict.

27. I beg here to recommend to particular Notice the Observations made by Mr. John Fryer Thomas on the very important Subject of Imprisonment; and to state that, with the Exception of his last Paragraph on this Subject, I adopt them, as expressing the Opinions which I myself also hold.

28. I conclude my Observations on this important Chapter by remarking that, although the Code proposes to restrict Capital Punishment to Murder and the highest Offences against the State corresponding in this respect very nearly with the practical Administration of the present Law, the gravest Doubts have arisen in my Mind of the Efficacy of Death as a Punishment, especially in India.

Examination of
J. T. Barry, Esq.

29. It has been given in Evidence before the Commissioners on Criminal Law in England, that, "during the Period of about Twenty Years, in which Capital Punishment continued abolished in Tuscany, it was attended by a great Diminution of Crime in general, and almost an entire Disappearance of Crimes of Violence;" that Sir J. Macintosh's Suspension of its Administration for Seven Years at the Bombay Presidency was attended by "no Diminution in the Security of the Lives and the Property of Men;" that by gradually reducing the Number of Capital Executions from 235 in the Five Years ending in 1804 to Eighty-eight in those ending in 1809, to Seventy-one in those ending in 1814, to Twenty-six in those ending in 1819, to Twenty-three in those ending in 1824, and to Twenty-two in those ending in 1829, the Belgian Government, in the Four Years ending in 1833, without any Alteration in the Law itself, were enabled to dispense with Capital Executions altogether, the Capital Convictions having, within the same Periods diminished from 353 to 152, 113, 71, 61, and 74 respectively, and, lastly, in the Four Years ending in 1833, to Thirty-six, when no Example of Death was deemed requisite. The Returns, it is explained, "show very distinctly the Diminution of the Occurrence of Murder as Capital Punishments have diminished in Number, and especially when they were wholly discontinued." Other Instances are adduced from

In the "British Almanack and Companion for 1839" it is stated that 488 Persons sentenced to Death in 1837, only Eight Individuals were executed.

France, and in our own Country, where of late Years Capital Punishments have decreased to a very great Extent, and it is added, "The Class of Criminals who are guilty of Murder are Men with whom the personal Suffering which attends the taking their Lives has but little Influence. They are often desperate Characters, who conceive their Punishment will soon be over. In Cases of that Nature the Punishment should be characterized rather by Duration than Intensity."

30. As connected with this Subject, I would observe that when I was Register to this Court in 1830 the Judges issued their Circular Order of the 3d May 1830, in which, in order to form a correct Judgment of the Result of such Examples, they called upon the Officers executing their Death Warrants to make a Record of the Impression which these unnecessary Acts of Justice made, not only on the Spectators, but on the Convict himself, and having had these Returns for several Years past collected together, and copied out, I have just risen from their Perusal strongly confirmed in the strong Doubts of the Efficacy of Death as a Punishment, which the Facts above stated are calculated to excite in any unprejudiced reflecting Mind.

31. Discarding, not only all Religious Feeling, but the common Dictates of Humanity, let the most callous Statesman peruse these very curious Documents, and I defy him not to be struck by their extraordinary Results.

32. After the Proof given by Mr. Wilde before the Commissioners on Criminal Law in England, showing that within the short Period of Four Years no less than Four different Cases, involving Six Persons, perfectly innocent of the Crimes charged against them, were recently sentenced to suffer Death by the Judges in London, I confess that some of these Returns have made upon my Mind an indelible Impression of the still greater Danger to Justice in passing any irrevocable Sentence in India, where false Evidence is

so much more lamentably prevalent, where the greater Destitution and increased Ignorance of the Condemned more unfit them for bringing their Cases under Revision, and where the Executive Government has not yet organized even that occasional Review over final Sentences of the Judicial Tribunals which is practically in operation at home, and which is not only most desirable, but requisite, everywhere, to prevent the deplorable but irreparable Infliction of the great Crime of Murder by the Hands of Justice itself.

33. The wonderful Apathy with which the People view all Capital Executions is also most remarkable in these Returns. In many Places, such as Chicacole, Malabar, Honore, Rajahmundry, and Calicut, only from 150 to 300 Persons ever attend these Exhibitions; and, amongst them, Children and Females are the most numerous. In the larger Towns, such as Cuddapah, Bellari, Madura, Tinnevely, Salem, and Combaconum, containing a Population of many Thousand Souls, Capital Executions attract seldom more than from 1,000 to 5,000 Spectators, except on the most extraordinary Occasions; and even in a peculiar Case of this Kind, No. 18. of the Salem Calendar for the First Sessions of 1830, where no less than 10,000 Spectators are calculated to have been present, the Criminal Judge expressly reports that "although conducted with every practicable Contrivance to render it as imposing as possible, it created no salutary Result upon the People."

34. It is quite clear that this arises chiefly from Death, according to the Religious Creed of the People, being a Punishment much less terrible to those who believe in the Transmigration of Souls, or Mahomedan Paradise, than to such as dread "the Judgment to come" after Death. The Returns made by the Native Judge at Vizagapatam particularly exemplify this in Four several Cases. In No. 22. of the First Sessions of 1833, and No. 32. of the Second Sessions of 1834, he says that on the First Occasion the Prisoner on the Scaffold, after Confession of Murder, stated to the Spectators that "as he is punished by the ruling Power he is purified, and will go to Heaven, and then desired them to give him Leave, after giving his Compliments to them;" and in the Second, that a Female, after a similar Confession of Murder, observed to them, that "having received her Punishment from the ruling Power, she would be freed from Impurity, and go to Heaven." In the Third Case, No 33. of the Second Sessions of 1834, where the Prisoner, on the contrary, denied his Guilt, not only of Murder, but of all Transgression, still he added "that he must have committed some Sin in his former Life; so it has been his Fate. He saluted the Spectators, and said he would go to Heaven." And in a Fourth Case, No. 5 of the First Sessions 1835, the Prisoner plainly told the People "he killed his Wife as he was instigated to do so by the God Sree Ramoomoorty."

35. Where Superstition prevails to such a lamentable Extent as this, Death, the last Sentence of the Law, is robbed of all its Terrors. The People, collected by idle Curiosity, or by that Inclination for Spectacles of any Kind which characterizes Indians, sympathize with the expiring Criminal as a Sacrifice to Fate, purified by the extreme Unction of the ruling Power; and the lamentable Scene, here exhibited with a Truth which none but a Native was capable of portraying, closes with an Interchange of Civilities between the Spectators and the dying Culprit.

36. What the moral Effects of such a Scene must be is nowhere better evinced than by the Order of my Two Colleagues of the 14th June 1838, wherein, in contradiction to my Opinion, that such Convicts as desire it should be permitted to attend public Executions, they expressly prohibited their Attendance altogether on such Occasions, even where it had been previously customary and compulsory.

37. But in these sad Examples the Apathy exhibited by the Spectators is greatly exceeded by that displayed by the Culprits themselves, subjected to the extreme Penalty of the Law. There are, no doubt, occasional Exceptions visible in these Returns; but their Language in general is uniform, that the Convicts exhibit an astonishing Carelessness, Indifference, Insensibility, Resignation, Deadness to all Emotion, unmoved Calmness, collected Composure, and sometimes even Fortitude, rising on a few Occasions into a Contempt of Death, which would, under other Circumstances, excite Admiration. Several, the Moment when their Sentence is pronounced, state their Readiness to undergo Execution instantly. One, with a strange Indifference, expresses an Anxiety, before Death, to communicate to others his Talent for making Fireworks, and more than One indulges in gross Abuse of the Government and its Officers. The Criminal in No. 7 of the Salem First Sessions for 1832 offered, if allowed to live, to become a Christian. But the solitary Instances in which I find any Criminal to have resorted to Religious Consolation is a single Christian, and another single Mussulman, who, at his own Request, was attended by a Priest of that Faith.

38. Under such Circumstances, it is, I think, to be deplored that the Government Officers, from kind Motives towards the Sufferers, have been so weak as occasionally to have lent themselves to Measures less calculated to relieve them from any real Suffering than to give a highly objectionable Countenance to the miserably mischievous Native Impressions, that what is intended as a public Execution is really a triumphal Sacrifice. I allude to their furnishing them before Execution with Food unusually good, supplying them with the Luxury of Betel, presenting them with new Clothes, permitting their Distribution of Money or other Valuables, and, where they are of high Caste, allowing their Relations to officiate for the low Caste (Chuckler) Hangman. Such Acts, I think, should be forbidden strictly.

No. 9., at Salem.
1st Sessions of
1831.

39. On the whole I am not prepared, on this Subject, to recommend any Alteration in the Law itself; but its Administration should, I think, be greatly modified. The Executive Government should take the Punishment of Death more into its own Hands, with the View of gradually diminishing the Number of Capital Executions, increasing their Solemnity and Effect, and organizing a System for the occasional Revision of Capital Sentences. I here confine myself to indicate the Principles which I advocate, for, until these are adopted, the Suggestion of any Details for giving them Effect would be superfluous.

Chapter III.
62. and 63.

40. I have already argued in favour of excluding the Operations of the Mind from the Definitions of Crime. Here, however, it is declared that the Law itself is no longer to limit the Authority of its Officers, but merely their own intangible mental *Belief* or *Judgment* of the Law, how much soever opposed these may be to it.

41. I was at first inclined to distrust my own Understanding, rather than to attribute any Proposition so monstrous as this to the Law Commissioners. But there is no veiling the Fact. The First Illustration of No. 62 is, that a Soldier may fire on a Mob by Order of his Officer, "*in conformity with Law*;" but the Text decidedly also justifies his firing on it in direct Disobedience of the Law, without any Order at all, or according to the most *illegal* Order of his Officer, provided the Soldier erroneously, but conscientiously, believed such Act or Order to be legal; and in the Second Illustration, under a Warrant positively specifying the Individual to be arrested, which will justify Arrest by the Officer only after the Identity is first clearly *ascertained*, respecting which Justice requires that the Officer should act strictly at his own Peril, the Code gives its Sanction to the highest personal Outrage, not because the Officer believed the Law different from what it is, but because, instead of positively ascertaining the Identity of the Individual, as required by Law, he, contrary to all Law and Justice, acted on his own mere groundless *Belief* of such Identity. Instead of the clear undeviating Standard of the Law itself, which alone ought to limit the Power of all its Officers, a Standard is here assumed intangible to any but the Officer himself, varying with each Individual's Knowledge and Capacity, and regulated even by those of its lowest Menials, whose Authority is declared to possess no other Limit than their own Belief and Judgment. I need hardly dwell on the inevitable Abuse such a monstrous Law would organize in any Country, more especially in India.

67. 42. In this Clause I would omit the Words "or delirious," for Delirium may be produced *voluntarily* by narcotic Drugs, and is not, like Madness, always of considerable Duration.

68. 43. After "State" I would omit the remaining Words in this Clause, and substitute for them "of *involuntary* Delirium, or involuntary Intoxication."

69. and 70.

44. At Clause 26 it is declared that "a Person is said to cause an Effect *voluntarily*, either "when he causes it by Means whereby he *intended* to cause it, or by Means which "at the Time of employing these Means he *knew* to be *likely* to cause it." I greatly doubt the Propriety of the latter Part of this Definition, especially with reference to the Distinction subsequently drawn by the Commissioners themselves in Note B, Page 17, between Acts which they there distinguish as "*voluntary* yet *not intentional*," that is to say, when the Person who caused Death did not *mean* to cause it, but *knew* that he was *likely* to cause it. They add what appears to me no less important than most appalling, "*in general* we have made *no Distinction* between Cases in which a Man "causes an Effect *designedly* and Cases in which he causes it with the *Knowledge* that "he is *likely* to cause it"

45. They then go on, in illustration of the Cases of Consent excepted from this very extraordinary Rule, in which, on the contrary, they distinguish the *Intent* from the *Knowledge* possessed of the *likely Result*, to instance a fatal Operation by a Surgeon, and a Shot fired at a wild Beast attacking a Man, which kills the latter, as exhibiting *no Intent* whatever to cause Death, yet the Possession of *Knowledge* that the Act was *likely* to cause it. Now the only Knowledge possessed in both these Instances seems to me to have been the very reverse of that which is here erroneously stated by the Law Commissioners, and to have coincided precisely with the Intent itself. The Knowledge possessed was that the Act of Man was in these Instances the sole Means left to *prevent* not to *cause* Death, and the Intent was the very same, not to *cause* but to *prevent* Death. The *Likelihood* decidedly was the *Prevention* of Death by the Act of Man, and the fatal Alternative was *not*, as the Law Commissioners erroneously state, any *Likelihood*, but the mere *improbable* Result of the Failure of his best Endeavours to prevent that Death which, by the Act of God, was, otherwise, quite *inevitable*.

46. But because the Law Commissioners, in these Two Instances, intending to give Illustrations of the Distinction between "Intent" and "Knowledge of Likelihood," chance, unfortunately, to have here quoted Two Cases in which they happen on the contrary to coincide instead of differing from each other, there is no Reason whatever thence to question the Correctness of the most important Distinction here drawn by the Law Commissioners themselves between Crimes produced by "Intent," as contradistinguished from such as are caused "without Intent," yet are accompanied by a Knowledge on the Part of the Causer of the Result "*likely*" to be produced, and there seems, on their own Admission of such Distinction, the very strongest Reason for doubting the Propriety of their having made *no* such Distinction "*in general*." My decided
Impression

Impression is that throughout the Code the Glimmering here given by the Law Commission of this highly important Distinction is altogether lost sight of, and that these Two Phrases, which, though they may occasionally express the same, may also, as here admitted by the Law Commission, often express very different, if not opposite, Things, have been nearly universally used in the Code, in the most dangerous Manner, as really convertible Terms.

47. For example, when, apparently from this Cause alone, it is found that a Person, who, in order to facilitate nothing else than *Theft*, without any Intent whatever to commit *Murder*, sets fire to a House situated in a Town, and thence drives away its Inmates, upon Loss of Life ensuing to People in the neighbouring Houses from being burned in Bed is by the Code sentenced to be hanged as their *Murderer*, notwithstanding he may have done all in his Power to confine the Fire to the empty House, nay, perhaps to save from the Flames the greater Part of those who dwelt in these Buildings, it was impossible to help thinking that the monstrous Injustice involved in thus confounding the minor Crimes of *Theft* or *Arson* with the great One of *Murder* must at once have revolted every right-judging Mind from such a Law, and arrested the Hand which penned this Provision, had not its Writer been misled by some Fallacy lurking in the promiscuous Use of these Phrases which goes to confound "Intent" or Knowledge that a Result proximately dependent upon Self is *so far as Self is concerned* quite certain with the very distinct Knowledge that such Result is quite *uncertain*, or only *likely* because dependent only remotely on Self, and even then less on Self than on some more *proximate* Cause, over which Self possesses no Control, nor *even Knowledge* of the Certainty of its Action; for instance, in the Case supposed, *on the Wind* which carried the Flames from the empty into the inhabited Houses, and which Accident the Code here allows to convert an Act of mere *Theft* or *Arson* into One of *Murder*.

Note B. page 17

48. I cannot help concurring with the Second Puisne Judge in opinion that the Reference made in these Clauses to Crimes of a most heinous and some of a most disgusting Nature as being Acts done "in good Faith" for the "Benefit" of the Sufferer is a complete Perversion of Terms.

71.

49. Vide Paragraph 5 of this Minute.

73.

50. I entirely concur in the Remarks of the Second Puisne Judge upon this Clause. In the Language of the Regulations of 1802, "the indispensable Rules of Justice require that a Power established for the Convenience of the State should not be converted into an Instrument of private Oppression and Wrong;" and when a public Officer, in gross Abuse of the Power vested in him for the Defence of the People, perverts it, to vent his private Malice against an innocent Individual, the Interest of the Common Weal imperatively demands that he should do so at his Peril, subject, not only to a future Civil Suit for Damages, but also to instant Repulse, by prompt Self-defence, which ought by Law to be vested in *every* Subject injured by so daring and dangerous an Outrage. It has only been by conferring on each of the People Power to resist such manifestly illegal Attacks upon personal Liberty that Resistance against Oppression and Public Spirit have been created where they happily exist, and we must despair of infusing any such desirable Feeling amongst a Nation too prone to succumb to every Semblance of Authority, unless the People are not only encouraged but required by Law at once to repel such an Outrage on Liberty.

75.

Preamble to Regulations 27 1802

51. It is also quite certain, that unless Section 3 of this Clause is entirely modified, its Enactment, as stated by the Second Puisne Judge, will completely paralyze the Exertions in defence of Person and Property into which it has been so long the Object of Government to rouse the apathetic Natives of this Country, who as yet too rarely act in defence of either. Mr. G. Casamajor, because he rightly "laboured no Point so much," has been more successful than any other Officer in the Interior in practically infusing amongst the People a new Spirit in this respect. His practical Observations, therefore, on this Point (with which the Result of my own Experience quite coincides) seem to merit special Attention; and with reference thereto I would add to Clause 3, "or of recovering the Property from, and, in unobtainable Cases, of securing the Person of the Offender."

52. Some such an Alteration of this *general* Clause will obviate all Necessity for the greater Part of the impracticable Details noted in the Margin which follow it, and against which my Colleague, as well as other Judicial Officers mentioned by him, urges strong and just Objections. Contrary to all right Principle, these Clauses make the *unknown* future Result the Standard to regulate Defence. It must prove no less embarrassing to Defence itself than highly dangerous to Life, to enact, that in defence Death may be inflicted in certain Cases, and in others any other Harm short of it, for, in the Irritation produced by Injury on Person and Property, Excitement, and sometimes Cruelty, in Cases where it is known that Life may be taken with Impunity, may too often lead to that deplorable Result, when maiming would and ought to have sufficed; and how can the Hand that lifts the Sword with the Intent merely to disable the Offender or recover the Goods be made responsible in the Heat of Blood ever attending personal Conflicts should the Wound prove more severe than was intended, and Death eventually follow? Whilst a single Trial, which the Code, where it forbids Death, would in such Case render inevitable, would operate as the most perfect Prohibition against all Defence whatsoever, either of Person or Property, amongst the People, the general Prohibition I have suggested will justify the Infliction of Harm,

76. 77. 79. 80. and 81.

even extending to Death, when necessary for the Ends specified, and yet, be the Crime committed how heinous soever, will punish all Cases either of wanton Disregard of Life or improper personal Injury. It is not the Degree nor even the Nature of the Offence, but the Conduct of the Offender, in each Case, which must regulate the Extent of private Defence necessary in every Instance.

82. 83. 53. I do not think these Clauses open to the Objections stated by my Colleague.

84. 54. I would omit all the Words after "or" in this Clause, on account of the Objections already urged against substituting the intangible and variable Belief in good Faith of Individuals, however opposed to the Law, for the clear Enactments of the Law itself, the only proper Standard.

Chapter IV.
85. to 97.

55. Unaccompanied by any explanatory Note whatever, this is, perhaps, the most obscure Chapter in the Code; and in the Interpretation of these Clauses such Mistakes appear to have been committed by even the most sensible Officers in the Judicial Department that it is evident no Part of the Code stands more in need of Elucidation and Amendment; nor am I, under such Circumstances, at all confident that these Clauses have been rightly comprehended by myself.

56. If I understand them aright, Clauses 88, 95, and 97, in those Cases only in which the Offence abetted is *actually committed*, punish respectively Instigators of the Person who commits the Crime; (88) Conspirators, (95) in pursuance of whose Conspiracy it is committed, and those who previously abet, with Intent to aid, (97) as the Principals themselves. No 93, where the Principals are liable to be confined *rigorously*, incongruously punishes Persons *present* while the Crime is *committing*, who instigate to persist, with only One Fourth of that Imprisonment which is inflicted on the Principal.

57. But, where the Crime is *not* committed, in *all* Cases mere Instigation to any Offence of *more than Ten Persons* is (94) punishable by Imprisonment to the Extent of Three Years, or Fine, or both; and in those Offences only which are punishable *with Imprisonment*, where the Instigation is aggravated by Bribery (90) or Threats of Injury (91), or Conspirators (96) commit any *Act* or illegal Omission in pursuance of the Conspiracy, *short of the Crime itself*, previous Abettors are punishable with Imprisonment to the Extent of only *One Fourth* of that inflicted on the Principals, or with the full Fine to which they are liable, or both. But, except in the Instances *specified* in the Code, it does not seem to be intended to punish "previous Abetment" at all, *when the Offence abetted is not committed*. Clauses 89 and 92 are independent of these other Enactments; and having thus briefly explained the best Construction I have been able to put on these Clauses, I proceed now to make a few Remarks separately on some in the Order in which they stand.

58. Without entering on the Question whether or not the Principles of the Law of England respecting Principal and Accessory, to which my Colleague gives the Preference, are susceptible of Improvement, it must be admitted that the Attempt at it made in these Clauses is wanting both in that Perspicuity and methodical Arrangement which alone can ensure it Success.

86. 59. To obviate the Inconsistency noticed by my Colleague, the *Explanation* should begin with "except in the Third Case of Aid," and in lieu of "Four" the other Three should be substituted; for the only Provision the Code makes for the Punishment of Acts or Omissions with Intent to aid is in 97, when the Offence "is committed."

87. 60. It must be confessed that the latter Part of this Clause, as stated by my Colleague, verges on the unintelligible. I would either omit altogether the Words from "not" inclusive, or substitute for them "with the criminal Intent to promote its Execution," which it is presumed is what is meant; though, on this Point, I am very doubtful. "Abetting the doing of a Thing, *which is an Offence*," cannot well apply to anything which becomes no Offence at all, in consequence of the Absence on the Part of the Doer of all criminal Intent whatsoever, here apparently termed "Misconception."

88. 61. Clauses 88, 95, and 97 should follow each other consecutively.

89. and 92.

62. I would omit these and all other similar Clauses whenever they may occur in the Code; for I agree with my Colleague in objecting to Commutative Punishment, and in the Opinion that when Two or more Offences are committed by the same Person it is preferable to punish for the greater alone.

90. 91. and 96.

63. The Confusion which has arisen respecting the Construction of this Chapter seems mainly attributable to the Omission of prefixing to these and similar Clauses the Words "when the Offence abetted is *not* committed," or others to that Effect; and also to the wording of the Illustration in No. 90, which (if I am right in the Construction I have put on this Part of the Code, of which I am by no means confident,) should run something in this Way: "Here if B. actually gives false Evidence, A. falls within the Provisions of Clause 88; but if B. does *not* give such Evidence, A. &c.," as in the Original.

93.

64. Why a Person *present instigating* to persist in the Completion of an Offence *in actual Progress* before his Eyes is to be punished less severely than the mere Tool in the Crime is beyond my Comprehension. On the contrary, this is the usual Occupation of all Heads of Gangs of Robbers, or of the Instigators to murder for Sorcery on the Western Coast, who, leaving the dangerous or bloody Work to their ignorant Tools or Slaves, diabolically urge them on by their Presence and Words, to the Completion of the Offences hatched by themselves. Such Abettors, whose Malignity alone imagined, and whose

whose Presence actually directs, the Offence, should, I conceive, be punished far more severely than their mere Tools, or, in the Language of the Law Commissioners, the *Doers* of their Crimes.

65. I am unable to adopt my Colleague's Objections to these Clauses, which, notwithstanding Mr. J. F. Thomas's Remarks on some of them, I think need no Alteration.

94. to 97.

66. I agree with my Colleague and the Authorities he quotes as to this Clause, by which the Abettor of the most minor Offence, say mere *Assault*, is made responsible for quite a different Offence, say the great One of *Murder*, 'provided the Abettor *knew* the latter Offence to be likely to be committed in the course of the former, though he may have used that Knowledge to prevent the major Offence.

98.

67. Under the existing Law, in Crimes of Violence, where by common Consent a general Resolution against all Opponents either is entered into or implied by Conduct, the Abettor is justly made responsible for the Doer's ulterior Result, though it be an Offence greater than the Abettor originally abetted, because in such Cases the common Design, in defiance of all Opposition, to commit the minor Crime, necessarily comprehends the Removal, by its Doer, of the Opposition offered against its Accomplishment, which involved the Commission of the greater Offence. Not only *Community* of Design to put down all Opposition, but the ulterior Offence having occurred in the *Accomplishment* of the minor Crime agreed on, are now both essential to implicate the Abettor in the Doer's major Offence, whilst it is proposed, by the Code, to convict him of the latter, without any such Conditions, upon the Abettor's mere Knowledge, not of the Result, but of its *Likelihood* only, although that Knowledge may have been used to prevent the greater Crime.

68. Every Abettor of Gang Robbery in India, no doubt, *knows*, like all else, that it is a Crime likely to be accompanied by *wounding*, *Murder*, and *Rape*, but it would be highly unjust, merely on account of such Knowledge, to hold all Abettors of Robbery responsible for these aggravating Offences, even if they used it to prevent these greater Crimes. Robbery in this Country is perpetrated generally by Bands, numerous and armed. But this armed Band is occasionally accompanied by a distinct Parcel of *unarmed* Parriah Coolies, picked up by chance on the Road, in order to convey the Goods when stolen. All are no doubt guilty of the Robbery, and the *armed Part* of the Band should, in addition, be held convicted of the *wounding* and the *Murder* also; but the *unarmed Coolies*, not privy to the common Design of putting down all Opposition, should not be held guilty of the distinct *wounding* or *Murder* inflicted by the armed Part of the Gang, to whom alone that Design was confined, especially if the unarmed endeavoured to prevent these Crimes; and I would submit that none, except the Doers of it, could be convicted of the *Rape*, more particularly such as endeavoured to prevent it. In a Case thus complicated the Arms and original Members implied Determination to put down all Opposition; and this Community of Design in *Accomplishment of the Robbery* led to the *wounding* and *Murder*, in which the Act of One became the Act of all such alone as *possessed that Design*; but the *Rape*, though no doubt incidentally facilitated by the Dread which the Commission of these other Crimes imposed, was not the Result of any common Design at all, nor in the smallest Degree in the *Prosecution* or *Accomplishment of the Robbery*. Still, contrary to all Justice, under this Clause of the Code, the Abettor of the Robbery would be held guilty of the *Rape* which he never contemplated, even if he had used his Knowledge of its Likelihood to prevent it, by advising the Females of the Family to go elsewhere.

69. The Words from "if" to "has," if included in Brackets, will render this more intelligible.

99.

70. I see no valid Objection to the remaining Clauses in this Chapter.

71. In both of these Clauses the Condition proposed by the 2d Puisne Judge seems to have been inadvertently omitted.

Chapter V.
109. and 110.

72. If the Words, "or by Signs, or by visible Representations," are omitted, far from thinking this Clause "wholly indefensible," I am of opinion that without it Sedition might stalk abroad, even into the public Prints, as it is said actually to have done.

113.

73. I agree with the 2d Puisne Judge that Mr. James Thomas's Objection to this Clause is just.

115.

74. My Colleague's Remarks render unnecessary any Observation from me on this Chapter, except that the Words "Soldier" and "Sailor," in the Enactments of the British Legislature, have very generally been restricted to Europeans, in contradiction to the *Natives*, usually so denominated, and it seems absolutely necessary in the Code that they should be declared applicable to both.

Chapter VI.

75. There is much Force in the strong and pertinent Objection taken by Mr. J. F. Thomas, to such Part of this Chapter as is borrowed from Reg. III. of 1831 of the Madras Code, framed principally upon the Enactments of the Bombay Regulations; for it was in consequence of the State of the Province of Canara that the Government on the 19th April 1831, called on this Court to prepare that Law, and since its Enactment Canara has been the only Province in which the People have broken out into open Rebellion.

Chapter VII.

76. With such a practical Lesson of the Danger of placing in the Hands of the Collector, who under this Government is also the Magistrate, a Power of Pressure, at Discretion, on the only Vent by which the local Grievances of the People at a Distance from the Seat of Government can reach the Notice of the ruling Authority, it would be prudent to pause before a similar Enactment is re-inserted in the Code.

77. The Chance of such a Result might perhaps in some degree be diminished under the great Reduction of Postage which has lately taken place, by organizing a System under which the People, especially in the more distant Provinces, might freely communicate their Grievances by the public Post to the Officers of Control at the Presidency. But the very absurd Enactment prohibiting this Court in its civil Capacity from noticing any Petition which is not presented *in Person*, or by *One of its established Vakeels*, and which in practice is extended to the Criminal Department also, at present entirely ties the Hands of the Judges, and such Appeals are now nearly invariably disregarded by us, so as (much to my Regret) to shut out the People altogether even from this very obvious Means of Redress.

Chapter VIII.
138.

78. I concur with Mr. James Thomas in the Propriety of not confounding any such distinct but indefinite Class of Persons as those "expecting to be" Public Servants with such as are actually in the Public Service. They should be punishable, like others out of the Service, for "cheating," and not for this Offence.

142. and 144.

79. Law and Justice unfortunately nowhere universally agree. Too frequently they are in all Countries at variance, and there are no Judges, deciding according to the most perfect Code, who do not in practice discover it to be occasionally very "unjust;" yet here the Code places every Judge on the Horns of a Dilemma. If, contrary to the Law, he decides according to his own individual Opinions of Justice, he must too often not only neglect but actually disobey the Code enacted for his Guidance. If, on the other hand, he obeys it, on Occasions when he knows it to be unjust, he is imprisoned by it for Two Years. A similar Remark applies to the Word "unjustly" in Clause 144. In both Cases I apprehend that the Words "contrary to Law" ought to be substituted for "unjust" and "unjustly;" for it is not, I conclude, intended that the Code should meet individual Opinions of Justice, except so far as these may coincide with the Sentiments entertained by the Legislature itself.

142. and 143.

80. The present Law giving to the unsuccessful Suitor the Right of Appeal has hitherto operated here as a sufficient practical Check against judicial Decisions contrary to Law or Justice. But, as here proposed, to convert this simple *Civil* Remedy against the *Suitor* into a *Criminal* Proceeding against the Judge himself, will put an entire Stop to the Administration of Justice. Judges, like all Men, are extremely fallible; and their Errors are ever liable to be attributed to wrong Motives; all Independence and self Confidence will therefore be entirely lost, and the Judges, completely paralyzed, if the vindictive Passions of the disappointed, amongst the most litigious People in the World, are let loose to inundate the Tribunals with a Flood of Petitions against the Judges themselves, instead of against the Suitors.

Notes, page 4.

81. "It is," say the Law Commissioners, speaking of the most criminal of our Countrymen, "unnecessary to point out 'how' desirable it is that our national Character should stand high in the Estimation of the Inhabitants of India, and how much that Character would be lowered by the frequent Exhibition of Englishmen of the worst Description placed in the most degrading Situations, stigmatized by the Courts of Justice, and engaged in the ignominious Labour of a Gaol."

82. If it be thus important to maintain our Character as a Nation so high in the Minds of our Native Subjects as to withhold from their Observation even the very worst Criminals of our Country, surely it is of far greater Consequence in India to uphold in public Estimation the spotless Integrity of those who are elevated to the Judicial Bench, yet nothing was ever more calculated to lower the Bench in its own as well as in public Estimation than the Proposal to inflict on a Judge such Imprisonment as the most ignominious Criminal undergoes. Mr. J. F. Thomas, on this Subject, quoting the Words of the Law Commission itself, justly says, The Imprisonment provided in these Clauses would be a mere Subject of Mockery to "shameless and abandoned Men, but when inflicted on Men who have filled the highest Stations, and maintained respectable Characters, would be so cruel that it would become more odious to the Public than the very Offences which it was intended to repress."

83. Though none can deny that a corrupt Judge deserves the severest Punishment, still Restitution of illegal Receipts, Fine, and ignominious Dismissal from Office, seem much more appropriate to the fallen Culprit than a Punishment which on One debased like himself reflects far less Disgrace than it irreparably attaches to the Bench he unworthily filled, which it is so much the Interest both of the Government and of the People to maintain unsullied.

84. Be the Punishment of Judicial Corruption, however, what it may, it is absolutely necessary to the Independence of the Bench that every Judge should be irresponsible to his Suitors. Great Learning, Talents, and high individual Character are to be found on every Bench in Europe; but the Judges of England have been raised above those of all other Countries in the World solely by the Legislature itself wisely clothing them with that perfect Irresponsibility to Suitors, and that sacred Independence in Office, which

are the only effectual Means to insure complete Impartiality in the Administration of the Law, and equal Respect from the Governors and the governed. It is only when a Branch of the Legislature itself interferes that any Act of theirs can be questioned.

85. This Principle ought to be extended as far as possible to India, by making the Bench responsible at the solemn Instance of some public Body alone; not at all at that of individual Suitors. Those who are raised to the high and important Office of administering the Laws of the Government to the People, be they our own Countrymen, and still more if they are the People of India newly associated with us on the Bench by the most upright and able Conduct, never can raise the Judicial Character to the Height it has attained in England, which it is so much the Interest of the Government, the Judges, and the People themselves that it should in Time acquire, unless the Indian Legislature imitates that at home, by clothing the Bench here with the same Independence and Irresponsibility which has been conferred on it in England.

86. As provided by Regulation V. 1828 of the Madras Code, I agree with Mr. G. Casamajor that this Clause should not apply to Covenanted Civil Servants. Indeed, with reference to the Remarks at Paragraph 3, Page 36 of Note B, this does not seem intended; nay, some Development is there made of a Principle similar to what I have just advocated above. But on the whole I have no Hesitation in joining Mr. F. N. Maltby in opinion that it will depend entirely on the Code of Procedure whether this will prove One of the most useful or most prejudicial Chapters in the Code.

149.

87. I join my Colleague in recommending the Adoption of Mr. Blanc's Suggestion.

Chapter IX.

88. I concur with the Second Puisne Judge, Mr. F. N. Maltby, and Mr. Sharkey, that the Imprisonment should, as under our present Code, endure until the Culpit conforms with the Requisitions of the Law.

153.

156., 159., 160.

89. I adopt Mr. J. F. Thomas's Opinion, that what he proposes is preferable to this Clause, and should be substituted for it.

161.

90. Here I do not agree with my Colleague. This Clause punishes mere false swearing on Points "not material to the Result" of a judicial Proceeding, while Clause No. 190. is applicable when the Points are material to such Result.

162.

91. I do not see any valid Objection to these Clauses. "Annoyance" is perhaps rather a vague Term, but it is easy to object to particular Words, yet very difficult to suggest preferable ones.

163. and 164.

92. For the Reasons stated by the Second Puisne Judge, I would strike out of this Clause the Words "offers any Insult," or insert in lieu of them the Words "above the Rank of a common Peon or Chuprasee." The Sufferer in distraint should not be too severely tongue-tied

179.

93. I do not see in what Way the Second Puisne Judge's Objections apply to this Clause.

181.

94. I approve of this Clause, vide Remarks on 163 and 164.

182.

95. I concur with the Second Puisne Judge in his Remarks on this Clause, and see no practical Necessity for it.

184.

96. The Reason why the Word 'Perjury,' as well as the English Law respecting it, has been entirely discarded in this Code, has been most satisfactorily explained in the Note G.; and it is gratifying to find so many Officers in the Interior bearing testimony to that Admiration which I agree with them is justly due to the Law Commission for the vast Improvements they have suggested in this important Branch of the Criminal Code.

Chapter X.
188.

97. As connected with the most complicated, difficult, and important Trial for Murder that ever came before this Court, No. 1. of the additional Calendar at Tellicherry for the First Quarter Sessions of 1834, so far back as the 11th March 1834, I stated, on the Letter No. 340, my Opinion, that if the First Prisoner in the Case No. 1. of the Tellicherry Calendar for the Second Quarter Sessions of 1832, who was hanged for Murder, had "been hanged by a Conspiracy, founded on false Evidence, the Conspirators must "be tried for Murder;" adding, "I am ready to maintain that this is the right Course;" and the Code now proposes to make this the Law.

191.

98. I perceive that the Second Puisne Judge differs from the Law Commission and myself on this Point; and with reference to the Case of Macdaniel and Berry, reported by Forster, and alluded to by Blackstone, adopts Mr. Christian's Opinion, that "few "honest Witnesses would venture to give Evidence against a Prisoner tried for his Life, "if thereby they made themselves liable to be prosecuted as Murderers."

99. This seems to me a pure Fallacy, by begging of the Question. It first wrongly assumes that Capital Punishment is to fall on the *honest* instead of on the *dishonest* Witness, and from these evidently erroneous Premises a Deduction is drawn necessarily fallacious. Honest Witnesses all over the World give Evidence against Prisoners tried for their Lives, although they daily see the dishonest Witness who perjures himself punished by the Pillory or otherwise. Why, I ask, should they not equally continue so to do, though that Punishment were increased in particular Cases even to Death? The Difference would be One in Degree alone; the Principle would remain unaltered. The honest, instead of being deterred from speaking the Truth by the Punishment of the dishonest, are thereby confirmed in their Attachment to Verity; and none can deny that in Perjury, as in other Crimes, the *ultimate* Result, effected by its shameless Means, is the only proper Standard by which to regulate its Punishment; not, as at present,

the mere Breach of moral Obligation which is *incidentally* involved in it. In respect to this Point the Law Commission carry me entirely with them; but as the Subject is one of the very highest Importance, I agree with my Colleague that the Law by its Text should expressly declare the Punishment annexed to Murder effected by false Evidence. As connected with this Subject, my Colleague, in his Remarks upon Illustration A. annexed to Clause No. 294., says, "In this Country the Provision for making Perjury Capital would involve the Danger of Conviction of such Perjury upon false Evidence. A new Door would thus be opened to Conspiracy." With reference to my Remarks on the Punishment of Death, I think this Point deserves the most mature Consideration; for in the important Case just alluded to, where Six Persons who had accused Two innocent Men of Murder, and caused Three others to perjure themselves by swearing to their Guilt, were themselves afterwards convicted of that very Murder, though they well deserved Capital Punishment, Doubts which arose in the course of that Case as to the Justice of a previous Capital Sentence passed in this Court, and the sad Prevalence of Perjury which the Case itself exhibited, induced me, and Two other Judges of this Court, to refrain from a Capital, and therefore irrevocable, Sentence. Such a Case having occurred once it may recur again, and on this Ground perhaps it would not be prudent to make the Sentence *irrevocable* in Convictions of Murder by Perjury.

100. This Rule should I think be extended as proposed by Mr. J. F. Thomas. Still I agree with my Colleague and with Mr. Strange in thinking that the Offence detailed in Clause 194 is more serious, and should be punished more severely.

101. Mr. G. Casamajor as well as the Second Puisne Judge do not seem to understand this Clause to apply merely to *Affidavits* swearing to some *Fact*. But if such are to be filed by a Court of Justice as Evidence of any Fact, "touching any Point material to the Result" of a Judicial Proceeding, I apprehend it will come within 190. It seems no doubt desirable that the Distinction between 195, 162, and 190 should be more clearly defined. It is very possible that I may not have apprehended them rightly.

102. The practical Suggestion of Mr. J. F. Thomas seems in no way met by the Objection of the Second Puisne Judge. I have been Principal Collector in Tanjore, where Mr. Thomas was Zillah Judge, and I think the Extension of the Clause proposed by him of vital Importance, not only to check Evil in Tanjore, but to impede its Progress into other Districts. In the Law of Procedure this should be made a Criminal Offence, summarily cognizable by the Civil Court in which the Suit is filed; and Mr. Strange's Remarks on this Chapter will, in the Code of Procedure, be of great practical Value.

197. 103. I see not the smallest Objection to this Clause. Mr. Casamajor has here argued from the *Abuse* against the *Use* of the Law.

104. In concluding my Remarks upon this Chapter, I beg, with reference to the "Report on the Law of Evidence," promised by the Law Commission at Page 42, Note a, to state my Opinion that nothing is more needed for the Guidance of our Judicatures than specific Rules on that most important of Subjects.

Chapter XI.

105. As this Chapter comes within the Cognizance of the Revenue rather than of the Judicial Authorities, I do not consider it necessary to add anything to the Remarks on this Subject made by the Second Puisne Judge and the Officers to whom he refers.

106. I have no Remarks to offer on these Chapters.

Chapters XII., XIII., and XIV. Chapter XV. 275.

107. On account of the Objections I have already stated against including in the Definitions of Crime "*Knowledge* of what is *likely*," I would omit the Words from "or with" to "Religion" inclusive, and when this Offence is committed with a *political* Object, I would make it punishable by Transportation.

108. I entirely approve of the other Enactments contained in this Chapter, with the Exception of Clauses 277, 279, and 281, which I would omit for the Reasons stated in Paragraph 62 of Clause 282, which I consider highly objectionable, because religious Discussions are seldom, if ever, so conducted as not to wound the Feelings of One or other of the Two Parties, and I deem such to be no Crime; and of Clauses 284 and 285, as I concur with those who consider it unnecessary and objectionable to legislate on the Subject of *Caste*.

109. In closing my Observations on this Chapter, I regret to be obliged to solicit Attention to the just Observation of Mr. F. N. Maltby, the Sub-Collector of Canara, who, with reference to the deplorable Prevalence on the Western Coast of the degrading Worship of evil Spirits, more fully explained in a Report by Mr. Newnham, when formerly a Circuit Judge there, suggests the Correction of Clause 283 by inserting "or supposed supernatural" between the Words "Divine" and "Displeasure." This seems essential, with reference to the debasing Superstition on the Western Coast, the Extent of which far exceeds general Belief. Finally, I must add, that I attach great Importance to the Insertion in the Code of Clause 283, thus amended, for it will, I hope, put a stop to the numerous horrid Murders for Sorcery committed on the Western Coast, in consequence of the Refusal of our Tribunals, hitherto to take cognizance of what the People (however erroneously) deem a great Crime. On this Point, the Sentiments which for many Years I have here singly advocated have at last found Support from the Law Commission, when they say, "though we may wish their Opinions and Feelings " may undergo a considerable Change, it is our Duty, while their Opinions and Feelings " remain

"remain unchanged, to pay as much Respect to those Opinions and Feelings as if we partook them."

110. I do not think it necessary to offer any Remarks on these Chapters.

111. I have already, in remarking upon Clauses 69 and 70, so fully explained the vast Danger I attach to the confounding in this Code "Intent," which forms the very Essence of all Crime, with mere "Knowledge of what is likely," that, in further Exemplification of its Consequences I have only to refer to my Colleague's apposite Remarks on the Illustrations here given of the great Crime of Murder; a Person relating agitating Tidings to another *dangerously* ill; a Guide leaving in a Jungle the Person whom he is bound to guide devoured, perhaps, by wild Beasts; a Gaoler omitting to furnish Food to a nursing Mother, the Failure of whose Milk causes her Child's Death; a Person detaining another in illegal Distrain, who omits to call in, for the Use of the detained, Medical Advice necessary to prevent Danger; in the event of Death from these *remote* Causes are here all actually *seriatim* declared guilty of Murder, and though the Commissioners in express Terms state that in India "we have Reason to fear Neglect and bad Treatment" "are for more common than good Medical Treatment," instead of urging this as the strongest possible Reason why "the Case of a Person who dies of a *slight* Wound, which, "from Neglect, or from the Application of *improper Remedies*, has proved mortal," should, as in Mr. Livingstone's Code, be excepted from Homicide, they actually urge it as the very Reason why, in this Country in particular, the Infliction of a mere Scratch should in such Cases, on the contrary, be constituted a Murder; nay, it is gravely provided, in the Illustration (b) to Clause 298, that A., the Instigator of the Suicide committed by Z, a Child under Twelve Years, shall be hanged for Z's own Crime, merely because, though Z cut its own Throat, it happened by Law to be incapable to give a legal Consent to the Suicide it committed.

112. It is fairly admitted that when Death is thus proximately caused by the homicide's own Hand, by Neglect or improper Remedies, the Want of successful Medical Advice, the Failure of a Mother's Milk, the Tiger in the Jungle, or agitating News, it will be far more difficult to prove that it was caused *remotely* by the Instigator to Suicide, the Scratcher, illegal Detainer, Gaoler, and Relator of Tidings respectively, than when Death is caused directly "by a Stab which has reached the Heart;" and it is also fairly admitted, that it will be still more easy to prove that "a Stab was *intended* to cause Death," than that the very *remote*, and, I submit, comparatively innocent, Agents of such Acts intended the Death produced by the *proximate* Causes above specified. Still, if established, it is argued that these Cases justly constitute Murder.* But here the Notes do not sufficiently explain that the Text of the Law, by the Insertion of the small Particle "or," takes a far wider Stride, and declares that even *where no Intent to kill exists*, if these *remote* Agents happen to possess a *Knowledge*, not of the Certainty, but of the mere *Likelihood*, that they *may* cause Death to ensue from such *proximate* Causes, however free themselves from Intent to kill, and, moreover, unable to control these *proximate* Causes, the remote Agents are to be hanged as Murderers. The mere Exposition of Legislation such as this renders any Comment on it superfluous.

113. The Objection taken by the Second Puisne Judge to the Second Condition in this Clause appears to me to be met by the Reasoning contained in Note M., Page 61.

114. Contrary to my Colleague, I think, under the Reasons given in Note M., Pages 59 and 60, that the Principle of this Clause is right; but I entertain Doubts of the Propriety of most of the virtual Exceptions from its Text, which are given under the Head of "Explanation." I mean with regard to the Words which follow "Passion," for in what is done under Cover of Obedience to the Law, and still more under Cover of its Authority, or by public Servants in the lawful Exercise of their Powers, or even in Self-defence, there may be given such grave and such sudden Provocation as never, in justice, ought to permit the Death to amount to Murder, but should confine it to the lower Crime of Manslaughter, as well explained in the Notes. The Essence of Extenuation from Murder to this Crime consists entirely in the Provocation given.

115. The Reasoning on Note M., Page 61, in my Opinion, fully justifies the general Principle of this Enactment. I would here, however, beg Reference to my Observations on Clause 18, showing that, contrary to what is contemplated by the Code, this Clause will make One guilty of Murder who induces Suttee by a Widow under Twelve Years of Age. Nothing is more common than for Native Women of all Ages to throw themselves into Wells on the merest momentary Impulse of Passion, excited generally by the most trifling Causes, such as an unexpected Reprimand, a thwarted Wish, the Colic, &c.; and those who are most afflicted by such Female Folly are, as its alleged Instigators, too often harassed most unjustly by the Police for fatal Consequences produced by the deceased alone. Suicide being the unnatural Deed of Self against Self, which no Act whatever on the Part of others can possibly justify, I see no Ground upon which, by it, others can be involved in the very distinct Crime of Murder.

116. Having recommended the Abrogation of Clauses 76 and 79, to which this refinedly obscure Enactment refers, I would also recommend that this Clause be modified, by leaving out the Words after "Death," and substituting for them "in the Exercise of "the Right of private Defence, as explained in Clauses 74 and 75, by inflicting more

Chapters XVI.
and XVII.
Chapter XVIII.

Note M., Page 58.

295.

297.

298.

299.

* "Contemplate as likely to cause Death" are the Terms used in Page 57.

"Harm than it is necessary to inflict for the Purpose of Defence, or of recovering the Property from, and in unobtainable Cases of securing the Person of the Offender."

to 304.

117. Except that too much Discretion in the latter Clauses is left to the Judge, and that the Penalty on all of them, particularly in 303, is too severe, I approve of these Clauses, and do not deem them justly open to the other Objections my Colleague has urged.

305.

118. This Clause seems justly open to the strong Objection stated by the 2d Puisne Judge, and I think should for that Reason be altogether omitted.

and 307.

119. I concur with the 2d Puisne Judge and Mr. J. F. Thomas respecting the unnecessary and objectionable Severity of these Clauses. It has been already stated that I deem it in the highest Degree against all sound Principle that another should suffer Death for Homicide committed on the Sufferer by his *own* Hand. Abetment of Suicide should be punished as an Offence greatly minor to *Murder*, with the Distinction very properly made between these Two Clauses, but each by Penalties greatly reduced.

120. I can nowhere discover in the Code the Provision for Death "by pure Accident," alluded to in Note M. page 65.

and 309.

121. The Reasons given for these Provisions in the Note M. Page 66 fully justify them in my Opinion, but it is desirable that they should if possible be made less obscure.

34.

112.

122. I concur in the 2d Puisne Judge's Remarks on these Clauses. Mr. J. F. Thomas's Observations on the latter evince that Attention to the Habits of the People which is too much neglected on this Code.

115.

123. Some horrible Cases occur to my Recollection, evincing the Propriety of the Additions proposed by Mr. J. F. Thomas. I allude to Barbarities committed both by Men and by Women, by Fire, red hot Irons, or heated Bongies applied to the *membra privata*, and to the Native Mode of depriving a Conjuror of his Art, by knocking out all his front Teeth, deemed indispensable to the due Pronunciation of his Incantations.

and 340.

124. The Law Commissioners state their Dissatisfaction with the "Quaintness of this Definition." It appears to me calculated to throw nothing but Ridicule on any Code of Law, as shown by the Second Puisne Judge. I do not, however, concur in his Remarks on 340.

and 352.

126. I entirely concur with the Second Puisne Judge and Mr. J. F. Thomas in the Propriety of omitting these Clauses. But I deem 343 to 345 inclusive necessary in Cases where Proof may be forthcoming to nothing but the "Assault" accompanied by Attempt to commit the specified Crimes.

146.

127. I agree with the Second Puisne Judge that the Penalty for this Offence ought to be increased. But I deem the Distinctions made in the subsequent Clauses judicious and proper.

and 360.

128. I concur in the Remarks of the Second Puisne Judge upon these Clauses. I also would omit, in the former of them, the Words "or of Hurt," with which the Clause headed "thirdly" concludes, for I cannot view sexual Intercourse, where the Females Consent is obtained under Threats of mere "Hurt," to amount to the grave Crime of "Rape." I agree with Mr. J. F. Thomas, that the Penalty for this Crime should be the same as for 362. A low Native Chucker admitted to measure for a Shoe the Foot of a European Infant at Bellari of respectable Parentage, who committed Rape upon it, was by this Court sentenced to Imprisonment for Life.

and 362.

129. Mr. Blanc, with much Justice, objects to the false Delicacy which has caused a most improper Ambiguity in these Clauses, leaving it uncertain whether "Touches" may not apply to mere indecent Liberties, or only to the actual Commission of Sodomy, or to both. The Distinction should be clearly made, and the Law should expressly declare, in the same Manner as it has done in Rape, what is sufficient to constitute Sodomy. According to the Law of England, this Crime when committed *between Persons*, was such originally only when the Parties were both of the Male Sex. But the Law has been altered in England by the 9th Geo. 4. c. 31. Section 15., and in India by the 9th Geo. 4. c. 74. Section , to any such Crime with "*Mankind*." This may be intended to extend the detestable Offences here defined, even when they are committed *between Persons of opposite Sexes*. But if it is resolved that the Offences in question should extend to unnatural Crimes committed by Man as well on *Womankind* as on *Mankind*, the Law, in this respect, cannot be too clearly stated. As little as possible should, in a Code, be left to mere Inference or Surmise.

ter XIX.

363.

130. Much contained in this Chapter is a great Improvement on the English Law, especially as regards the more correct Definition of Offences, and the Discrimination of the various Degrees of Aggravation in the same Offence. The Second Puisne Judge, when he quotes the Illustrations "A. and B." as *not* Instances of Theft, according to any Code he has seen, must have forgotten "Lapier's" Case, where the snatching of a Lady's Ear-ring from her Ear, though it was subsequently lost in her Hair, was, with that Stretch of Language necessary to Justice which is so usual with the English Law, quoted by him, absurdly strained by it into the Falsity of "carrying away." The other Examples noted by him may be extreme Cases, but I do not think that they deserve the Epithets he bestows on them. They clearly explain the Principle of the new Law.

364.

131. This Chapter differs from the existing Regulations in not proportioning Punishment in Crimes against Property with reference to the Value of the Property misappropriated; but I conclude this is because it contemplates Sentence of Restitution or Fine equivalent to it as Part of the Punishment.

132. I concur in the Observation of the Second Puisne Judge on this Clause, but not in his Remarks on 368, 375, and 376, except that I think *Three* or more should suffice to raise the Offence to Dacoity. 365. to 376
133. The Second Puisne Judge overlooks the Fact, that the increased *Severity* of Imprisonment contemplated by the Code has induced the Reduction of its *Period*; but I agree with Mr. J. F. Thomas that *Leaders* or *Heads* of Gangs in Dacoity should be made liable to Punishment higher than inflicted on the mere Members of the same Gang. 377. and 379.
134. This Clause, as suggested by the Second Puisne Judge, evidently requires Correction, with reference to the Principle acknowledged in Section IV. Regulation VI., 1822, of the Madras Code, and particularly with reference to "habitual and professional Receivers" of stolen Property. 389.
135. With reference to the important Objects noticed at the Conclusion of Note N., I doubt whether this Part of the Code can be condensed as proposed by the Second Puisne Judge. 423.
136. I am of opinion with the Second Puisne Judge that in this Clause Crimes of different Criminality have been mixed up together, and for which special Provision does not appear necessary. Chapter XX. 443.
137. My Objection to "Knowledge of Likelihood" extends to these Clauses. I cannot join in the Opinion of my Colleague on No. 444 and 449, because the Intention to injure is coupled with the Possession in the latter Clause, and makes it justly highly penal. I do not think the rest of this Chapter objectionable. 447. and 448.
449., 450., &c.
138. This Chapter I conclude refers to *Land* Marks, as well as to Marks for other Property, and is highly necessary, particularly under the Ryotwar System, where the Boundaries of Fields define the Rights of individual Ryots, as well as under the Village or Zemindary Systems, where, in addition to the Boundaries of Fields, which the Ryotwar System requires, the Boundaries of Villages and even of Zemindaries must be maintained. It is also, I consider, essential to the Stamp and Post Office Revenue, and does not appear to me open to the Objections made by the Second Puisne Judge. Chapter XXI
139. I have no Remarks to make on this Chapter, further than that I think it is vindicated by the Note O. Chapter XXII.
140. For the Reasons given by the Officers in the Interior, I would extend this Chapter to the Punishment of Servants quitting their Masters without giving a Month's previous Warning. It is a great Evil to Individuals, and when Troops are ordered suddenly to march becomes a *public* Evil. Chapter XXIII.
141. Mr. F. N. Maltby quotes a practical Case which does not seem provided for in the Code, and should, I think, be punishable under it. Chapter XXIV.
142. I incline to the View taken by the Second Puisne Judge and Mr. J. F. Thomas respecting this Chapter. Chapter XXV.
143. I concur in the Remarks of the Second Puisne Judge on these Clauses; but I would retain Clauses 486 and 488. Chapter XXVI.
485 487.
144. Of the various Omissions from the Code noticed by the several Officers in the Interior, I would recommend the Adoption of the Suggestions of Mr. J. F. Thomas, Mr. G. Bird, and Mr. E. Maltby.
145. In concluding my Observations on the Code, with Advertence to the Law of Evidence promised by the Law Commission, I strongly recommend to their Attention the Trials No. 1 on the Mangalore and No. 19 on the Malabar Calendar for the First Sessions of 1836, and No. 129 on the Criminal File of the Calicut Court for 1836, in which Three most horrid Murders were perpetrated, One boldly in the open Face of Day, another at Night, with such Secrecy that the Deceased was removed from and brought back to his House, still alive, without the Knowledge of its Inmates, and the Third, committed on a Female, accompanied by Circumstances of most atrocious, revolting, and unheard-of Barbarity.
146. Each of these Crimes was perpetrated by the Hands of Men who entertained no Malice whatever against the Deceased, but were the Slaves or dependent Agents of the Person whose sole Malice instigated the Crime; yet the extreme Penalty of the Law has, in all of them, fallen exclusively upon those miserable Wretches who were the mere Tools or Instruments by which the more guilty Instigators struck at the Lives of their unhappy Victims, and in each of these Cases the Instigator himself, the most guilty of all, has entirely escaped all Punishment.
147. Where such has been the Result, it is evident that there has been a Failure in the great Object of Justice, namely, the prompt Punishment of Crime at its Source; and believing, as I do, that this may be traced to a Defect in the Law of Evidence, I have uniformly but unsuccessfully endeavoured to obtain from my Colleagues a Representation to the Government for its Alteration. My Want of Success renders it only the more imperatively my Duty not to remain silent until a Remedy is applied to so great an Evil.
148. In none of these Three Cases did I at all impugn the Liability to Capital Punishment of the actual Perpetrators of these horrid Crimes; but in each of them I most strongly deprecated the Course followed. On the First of them I observed, "I deeply
(263.) L 3 "lament

lament the Result of this and other similar Cases on the Western Coast of India, where the ignorant Slave and dependent Tenant, the mere Tools of Murder, undergo the extreme Penalty of the Law, instead of being made the Means to bring home Punishment to their Master, the real Instigator of the Crime, who is thus left to escape from all Punishment. I fear that so long as this Court is silent on this Subject, and fail to bring before the Government the Propriety of the Law being changed, which confines their Pardons to those who are not actual Perpetrators, and thus prevents the actual Tools being used as Evidence against the instigating Mind originating the Crime, or, if the Law authorizes such Course, so long as this Court does not actively encourage its general and efficacious Enforcement by the Magistracy, it must take its Share of Responsibility for that Impunity of the Instigators of Murder, which, more than any Demoralization of the People, leads to this open Commission of Crime in the Face of Day."

149. On the Second Case I remarked, "I think that as my Colleagues consider themselves precluded by the Word 'Accessaries,' in Sec. XX. Reg. VIII. 1802, from offering any Pardon to the actual Perpetrators of a Murder, that this Trial should be laid before the Government after Sentence is passed, before it is executed, with the view of ascertaining whether they may not deem it proper to grant a conditional Pardon to these Two Prisoners, with the view to the Conviction of the diabolical Instigator of this foul Murder, whom otherwise the Law cannot reach; for I think it will be a grievous Reflection on the Administration of Criminal Justice, if the only Party who entertained Malice against the Deceased, the wicked, the high Caste, and well-educated Nair, who planned, instigated, and by his actual Presence superintended the Crime, is to escape free from Punishment, and that it is to fall exclusively upon his mere Tools, his wretched Paria Slaves. In the Language of the Tahsildar, 'his Dependants, inferior in Caste, ignorant People, and who had no Occasion to murder the Deceased, committed the Crime for the sake of the Third Prisoner,'—miserably degraded Wretches, who for less than a Shilling executed what their Master's cowardly Hands shrunk from. The Circuit Judge observes that 'the Prisoners were in a State of such abject Dependence that there was nothing they would not do at the Bidding of their Master,' and I cannot help thinking that "such Crimes will be more effectually checked by Punishment reaching the controlling Master who pilots them, than the abject Creatures whom the Ties of Caste bend to his Will, even at the Sacrifice of their own Lives." Nor did I in this Case abandon the Course here advocated until my Two Colleagues explicitly declared that even if such Pardon were granted by Government to the Two convicted Slaves, they would not, on their Testimony, in addition to what else there was against him, concur with me in convicting the Master of the Crime in question.

150. On the Third Case I observed that I deemed the Offer of a Pardon to the Perpetrators of Murder contrary to Sec. XX. Reg. 1802, but that I "continued of opinion that the Law should be altered, and thought we were bound to report to Government the horrid Cases of Murder in Malabar by ignorant Slaves, as in this Case, at the Instigation of others, generally their Masters, always their Superiors in Intelligence, and to propose that in order that Punishment may reach the intelligent Instigator, whom I deem even more culpable and a more proper Object of Punishment than the ignorant Tool he employed, that this Court should possess the Power to admit even the Perpetrators as Evidence against the Instigator of Murder."

151. In the same Manner, as recorded in my Minute of the 13th September 1836, when I temporarily left this Bench, I still remain, to the present Hour, most strongly under the Impression that the repeated and continued Impunity which has attended these Instigators of Murder on the Western Coast must have operated most mischievously upon the People, by giving Confidence and Encouragement to the powerful in the secret Indulgence of their private Revenge, and exposing Human Life there, even in open Day, to an alarming State of Insecurity. I also think that when the extreme Penalty of the Law thus falls on the least guilty the Effect of even Capital Punishment is weakened as a public Example to the People, for popular Sympathy, excited against the really guilty Instigator, cannot fail to commiserate his wretchedly misled Dependants, to whose Fidelity their Lives have fallen a Sacrifice; and it must never be overlooked that the Destruction by the Hands of Justice of these miserable Tools in Murder,—whose extreme Ignorance renders them such passive Instruments in Crime that in Two of these Cases they actually believed themselves possessed of supernatural Powers of Conjuraton,—by One Blow annihilates the principal Proof against the more guilty Instigator to the Offence, and that Justice, by her own suicidal Act, thus altogether absolves him from Punishment.

152. According to the Law of England, any *Particeps criminis* is admissible to give Evidence against the others engaged in the Offence; and although in practice it is usual to direct the Jury to acquit the Prisoner where the Evidence of an Accomplice stands entirely uncorroborated, still in strictness of Law a Prisoner may be convicted on the Testimony of a single Accomplice, when Credit is given to his Evidence.

153. If such is the established Law of our native Land, distinguished from most others by her Advancement in Civilization, where, happily, extreme Ignorance, Superstition, and the debasing Ties of Caste, or the more ignominious Bonds of Slavery, neither obscure the Intelligence, enchain the Freedom, nor lower the Dignity of Human Nature, it is still more requisite that it should be the Law of India, where all these lamentable Causes combined

combined form additional Inducements and facilitate to Crime, and Justice is not only obstructed but outraged, by perfect Impunity being held out to the malicious, educated, cowardly, and guilty Murderer, at the Expense of his mere Instruments, void of Malice, whom alone the Law, as now administered, sacrifices to Justice.

(Signed) A. D. CAMPBELL,
Third Puisne Judge.

Enclosure 4 in No. 78.

(No. 52.)

H. DICKINSON Esq. to the REGISTER of the COURT of FOUJDAREE UDALUT,
Fort St. George.

(No. 160.)

Provincial Court, Southern Division, Trichinopoly,
21st November 1838.

Sir,

1. In compliance with the Orders of the Court of Foujdaree Udalut, I do myself the Honour to submit a few Observations which have occurred to me on a Perusal of the new Indian Penal Code.

2. There is much in the new Code that is excellent, but more that is altogether inapplicable to the Natives living under this Presidency, and which could not I think be brought into operation in our Courts. I look upon the Code more as a good Groundwork by which our own Code might be rendered more perfect than as a Code by which the Acts of every-day Life could be regulated and tried. If it were used as a Guide for the Improvement of our present Laws, no doubt much Good would be derived from it; but if by One Stroke of the Pen the whole of the Penal Code of this Presidency is to be declared to be rescinded, and the new Code established in its Room, I cannot but think that we shall be abandoning much that is admirably adapted to the Natives living under its Operation, and be adopting in its Room a Mass of Crudities which can only by extensive Revision be rendered fit for Practice.

3. In its present Form I do not think that our Criminal Courts could continue in operation if the new Code were rendered their only Guide. The Machine would stop altogether; or if it continued to move it would be because the Courts took upon themselves to act in Cases not provided for, but which ought not to be left to their Discretion.

4. The Extent of Punishment that may be inflicted is in many Instances far too unlimited to be with Safety introduced into Practice.

5. It is with regret that I observe that Flogging is not included as a Punishment. Had the Code been prepared by Men who had had extensive Experience in the Mofussil they would have known that Imprisonment in our Gaols is scarcely considered a Punishment by Native Thieves, and that the Cat is the only Punishment they dread.

6. Limited as the Number of Stripes are by our Regulations, a Sentence of flogging can never be said to be "cruel," if the prescribed Precaution of examining the Offender, and ascertaining that he be in a fit State of Health to bear the Punishment, be observed. In the Abolition of flogging we shall from a squeamish Fastidiousness be abandoning the most effectual Check to Crime that we at present possess, the Effect of which will soon be apparent by the over-loaded State in which our Gaols will be found.

I have, &c.

(Signed) H. DICKINSON, 1st Judge.

W. R. TAYLOR Esq. to the REGISTER to the COURT of FOUJDAREE UDALUT,
Fort St. George.

(No. 159.)

Provincial Court, Southern Division, Trichinopoly,
28th November 1838.

Sir,

WITH reference to your Letter under Date 6th instant, desiring that the individual Opinions of the Judges of the Southern Provincial Court of Circuit on the Penal Code prepared by the Indian Law Commissioners may be transmitted without further Delay, I have the Honour to state, that having only very recently been appointed to the Provincial Court, and not having been supplied with a Copy of the Penal Code, I have not had an Opportunity of forming an Opinion upon the Subject. Having, however, understood that it is in contemplation therein to abolish Corporal Punishment, I beg to offer my Opinion that such a Measure would be highly inexpedient, and that it would tend to increase Crime in every Form and Degree, as the mere Confinement in Gaol, with Labour in Irons on the Roads, is not so much dreaded generally as the Infliction of Stripes, the Fear of which alone, in my Opinion, deters Persons from committing Offences.

I have, &c.

(Signed) W. R. TAYLOR, 2d Judge.

OPINION of the Acting 2d JUDGE.

HAVING read the Penal Code with Attention, I consider it, generally, well adapted to the Wants of Society in the Punishment and Suppression of Crime, and securing the Persons and Property of Individuals; I say *generally*, and not entirely, for the following Reasons :—

1. I cannot think the confining Capital Punishment to Murder in this Country judicious. I am of opinion that Gang Robbery, attended with aggravating Circumstances, should be liable to it. I do not mean that its Infliction should be imperative, or even lightly resorted to, but that the Power of Infliction should exist,—that a Discretion should be vested in that Tribunal now having the Power of Life and Death,—and that this should not be a mere dead Letter, but be actually inflicted where the Circumstances of Aggravation are marked. Let the Natives know their Liability to this Punishment, and see it occasionally inflicted in such Cases as above contemplated, and I am inclined to think, though it may not do away with the Crime, it will go far to rob it of many of its most revolting and disgusting Accompaniments, resorted to now for the Purpose of forcing the pointing out and giving up of Property, so that in addition to the Diminution of Suffering would be the saving of Property, Access to which is now only obtained by those Practices which would then jeopardize the Lives of the Robbers.

2. I am opposed to the Abrogation of Corporal Punishment, which I think should be left discretionary with the Authorities formerly exercising it to exercise again. There may be Cases in which its Infliction would be objectionable, but I am convinced that there are others in which it is essential, and I would recommend the above Discretion being granted.

3. Such Discretion I would also extend to Cases of Exhibition on an Ass of Persons convicted of Perjury and Forgery, and Subornation and Abetment of each. These Crimes have gone to such a Length in the Southern Division that to take from the Dread of Punishment now existent would, I think, be pregnant with Injury. On those who would not be likely to feel the Shame and Degradation attending the Punishment, let the Judge, under the Discretion vested in him, abstain from inflicting it, but on Persons of Influence and external Respectability, whose Feelings are more susceptible of Exposure and Disgrace, the Power of Infliction should remain, as it is only by checking these latter that any Hope of curing the former can be entertained, as the lower and more obscure in the Commission of this Class of Crimes usually act in concert with or at the Instigation of the more influential.

4. I am opposed to Clause 57 as explained in Note A. Not to give a Person the Choice of paying with his Person or his Money is all very well, and if a Man who *has* Money will hold out, and not pay it, and so chooses to submit to a Period of Imprisonment, he may perhaps be not unreasonably held responsible for the Payment of the Fine nevertheless, “the Confinement which he has undergone being regarded as no more than a “reasonable Punishment for his obstinate Resistance to the due Execution of his “Sentence;” but I cannot think it just, where all has been fair and straightforward on the Part of the Offender, where, from absolute Want of Means he has endured Imprisonment in lieu of Fine, to lay such a Clog on his future Industry as to render any Property he may acquire liable for the Amount of the said Fine within Six Years after his Sentence.

5. I should be apprehensive that Clauses 76, 77, 79, and 80 would be liable to deter from Exertion for the Protection of Person and Property, by creating a Doubt how far the Circumstances attending any particular Case warrant Exertion.

6. I am disposed to think Clause 138, and most of those from it to Clause 150 inclusive, of very little Use, since most of the Offences contemplated in them must virtually end in Suspension from Service; for what Government would even employ in any Situation of Responsibility (and all are more or less so), a Servant who had been convicted and punished in the Way therein mentioned for the Offences therein enumerated? and if Suspension from the Service is to be the final Result, to what Purpose first have recourse to another Mode of Punishment, instead of at once inflicting the higher Grade? I can only imagine the Utility of such minor Punishments on the Supposition that after Infliction the Person who has undergone them might return to his former Position absolved, as it were, by them, as in Cases involving no moral Turpitude; but not where their Infliction still leaves a Stain on a Man's Name, pointing him out as unfit for public Employ.

Lastly and generally, I am of opinion that in many Parts the Code proceeds too much upon delicate States, nice Distinctions, and Subdivisions of Crime, to be on a Level with the Apprehension of ignorant Natives, and is from that Circumstance (in such Parts) calculated rather to bewilder than to guide.

(Signed) W. HARRINGTON,
Acting 2d Judge, Provincial Court, Southern Division.

T. A. ANSTRUTHER Esq. to the REGISTER to the COURT of CIRCUIT, Southern Division
Trichinopoly.

Sir,

Madura Criminal Court, 26th September 1838.

HAVING already reported on the Penal Code from another Court, I need not repeat any Part of what I have once written, and will only state that I have my Opinions strengthened by subsequent Inquiry and Reflection.

2. On the Subject of Punishments I believe most Natives of Intelligence who have observed our System, and its Effects on the Native Character, and its general Estimation, will agree, that constant living Examples of Punishment have more Effect than severe ones of Death or Transportation, which can only affect the Beholders, and are quickly over and forgotten by them, and by the Relatives and Friends of the Convicts, to whom the visible Act of Deportation only is terrible, the Effects of Transportation being rendered doubtful by the Chance of the Death or Escape of the Party. The Classes liable to be affected by a System of Criminal Punishments are notoriously unreflecting, and if by Modes of Punishment of actually less Severity than those now used we can ensure a lasting and certain Example of greater Effect, it is criminal to abstain from adopting them on account of their Distastefulness to civilized Minds. Amputation is what I mean. When we substituted our civilized and humane Code of Laws for the violent and cruel Codes of the Country, the latter were administered so badly that their Character seemed less adapted to the Country than it would have seemed had they been purely administered; and under the Confusion and Anarchy of the Country, and the Corruption and Disregard of all Right prevalent among the Authorities, high and low, the purest and mildest Code in the World would have appeared to have as bad or worse Effects. Having, however, shown to the People of this Country the Nature and Effects of our System of Criminal Jurisprudence, and enabled them to appreciate the Blessings of a pure Administration, and to compare ours with the Systems and Administrations of Native Governments, we may attach much Weight to the Opinion of the most intelligent and humane amongst them, and should they be invariably in favour of a Recurrence in certain Cases to the Use of Amputation, it would be arrogant to disregard that Opinion. I believe such to be the universal Opinion, and I know it to be the Opinion of all that I have been able to consult, and it is my own. At the same Time the Advocacy of Amputation is known to be so repugnant to European Notions, and the Expression of Opinions strongly opposed to those of the Government Officers is felt to be so imprudent, that it may be doubted whether the conscientious Opinion of the Generality of Natives consulted would be given. The Punishment at present awarded for Gang Robbery is found too mild to check the Crime, and I know that One Member (if not more) of the Civil Service of great Experience is of opinion that some Examples of Death awarded in Cases of atrocious Gang Robbery are required. Amputation of One, and, for a Repetition of the Offence, the other Hand, would surely be a more merciful Sentence than Death, which being so, as it must be allowed, and the Necessity for it being asserted by a vast Number of the most intelligent Natives who have witnessed our benevolent Endeavours to introduce Mildness into Criminal Law, and have seen and felt, though we cannot, our Failure, there is no Reason why we should refrain from adopting it.

3. In the awarding of the heavier Degrees of Punishment it would be a very great Improvement in our Laws if some Means could be devised to allow the Judges some more Discretion than they have at present, without suffering the Laws to be vague and fluctuating. Having seen Instances where One Prisoner was sentenced to Fourteen Years Imprisonment for stealing One Pice Worth of dry Grain (so in the Futwah), because he had used Violence when, in his Attempt, excited by Famine, to make off unperceived with his little Booty, he was seized by the Owner of the Grain, and having seen in the same Circuit Sessions a Gang of Robbers who were convicted of breaking open a House with Circumstances of Aggravation and Terror, torturing and burning the Female Inmates, and plundering the House of a large Sum of Money, sentenced likewise to Fourteen Years, which Equalization of Punishment, and, consequently, of Criminality, was caused by the Adherence to Mahomedan Law, and the Judge having no Discretion to amend it, I think no further Instances are needed to show the Necessity of altering the Administration of the Law.

4. Considering the Extent of British India, Three Codes are not many; and after Thirty-six Years Experience, if they are found to work well, and to require a few Amendments only, which could be effected without Expense or Trouble by a circular Order or a few new Regulations,—considering that the Natives have become accustomed to and familiar with them, which is of itself a most desirable Circumstance,—there appears to me every Reason to deprecate the Introduction of a Code which sweeps away every Vestige of the old; considering that our Three small Volumes contain Civil Code, Criminal Code, and Code of Procedure, and that the Madras Criminal Code and Code of Procedure will, when freed from its Connexion with the Mahomedan Law, bear a Comparison with the Penal Code now circulated, the Reasons for rejecting the latter and adhering to the existing Code become cumulative.

5. I trust the preceding Observations will not be thought out of place, for in considering the Expediency and Practicability of the Introduction of the Penal Code of the Law Commissioners it is natural to consider whether it be not preferable to retain our own Code, or how, by some Modifications in it, it may become so.

I have, &c.

(Signed) T. A. ANSTRUTHER,
Acting Criminal Judge.

J. SILVER Esq. to the REGISTER to the PROVINCIAL COURT, Southern Division,
Trichinopoly.

Sir,

Tinnevely Auxiliary Court, 2d July 1838.

I HAVE the Honour to acknowledge the Receipt of your Letter of the 20th ultimo, and in obedience to the Instructions therein contained beg to submit a few Observations which have occurred to me on a Perusal of the Penal Code prepared by the Indian Law Commissioners.

2. It is with much Deference I would note a few Remarks on the Chapter relating to "Offences against Public Justice."

3. "Whosoever in any Stage of any Judicial Proceeding being bound by an Oath, or by a Sanction tantamount to an Oath, to state the Truth, states that to be true which he knows to be false touching any Point material to the Result of such Proceeding, is said to give false Evidence." The Number of Complaints preferred before the Police Authorities in proportion to the Number of Convictions is remarkable in this District, and the Extent to which Perjury and false swearing prevail among the Natives is well known. If "false Evidence" is defined to be false Statements made by any Person, bound by an Oath, or by a Sanction tantamount to an Oath, unless the Privilege of examining Parties on Oath be granted to Native Officers of Police there would remain no Punishment for Persons making false Complaints before them, as there now is by the Madras Code of Regulations no Punishment for Witnesses giving false Evidence before them.

To extend to Native Officers of Police the Privilege of examining Parties on Oath would hardly seem advisable. Originally, as an Oath was administered among the Hindoos with many Ceremonies and Observances, it was an impressive Ceremonial; but the Frequency to which it is now resorted to, when in every petty Case before the Magistrate the Parties are sworn by the Bramin attached to the Office, lessens its Weight and Importance; and, except in serious Cases tried before the higher Tribunals, the binding Parties by an Obligation incurring a temporal Penalty only in case of their giving false Evidence would seem preferable to administering an Oath. Perjury too is a Crime most difficult of Conviction; hardly can there be any Crime more so; whereas by the Madras Code, to punish for a false Complaint before a Tasildar it is merely necessary that, on a View of the Evidence, it should appear that the Charge was false and malicious. A Conviction must necessarily in a Charge of this Nature be much oftener got than in a Charge of Perjury, and the good Effects, I think, are great. If the Punishment for instituting frivolous and vexatious Civil Suits be followed by a Law for the Punishment of false Pleading, the Advantage would certainly appear to be considered on. The Punishment of degrading an Offender by exposing him on an Ass is stated to be unequal, as its Effects will differ as to the Degree the Offender retains the Sentiments of an honest Man. Still it would appear to me that the retaining the Power of inflicting this Punishment in the Crime of Perjury is advisable; the End of all Punishment is not Revenge on the Individual, but the Good of Society, in order to deter from Crime; and the greater the Contrast the greater will be the Punishment. The Evil is enormous, Conviction difficult, and the Punishment must necessarily be severe.

I have, &c.

(Signed) J. SILVER,
Officiating Joint Criminal Judge.

F. M. LEWIN Esq. to the REGISTER to the PROVINCIAL COURT of CIRCUIT, Southern Division, Trichinopoly.

Sir,

Combaconum, 24th May 1838.

I HAVE the Honour to acknowledge the Receipt of your Letter of the 18th ultimo, and a new Penal Code which it is proposed to enact, and upon which I am directed to offer any Observations which may occur to me, after Perusal of it.

2. I beg leave with great Deference to express my Opinion that the Penal Code will prove a great Blessing to these Provinces, and that I do not see any Objection to any Part of its Provisions, nor do I anticipate any Difficulty in carrying them into execution, provided a good Code of Procedure is framed for the Purpose, upon which it is obvious the Success of the Penal Code must mainly depend.

3. Whilst the above is my Opinion, I beg leave to qualify it by observing that I consider the Abolition of Corporal Punishment to be a very injudicious Measure, into which the Law Commissioners may have been led by mistaken Lenity, and from a Want of Knowledge of the Manners and Customs of the People.

4. The

4. The Reasons for the Abolition of this Punishment found in the appended Notes of the Law Commissioners appear to me quite unsatisfactory.

5. It is stated there that the Abolition of Corporal Punishment having been carried out through a large Portion of our Territories from humane Motives, which have not been proved to have been injudicious, we ought not to retrace our Steps, &c. &c.

6. I believe that great Doubts are entertained in Europe as well as India of the Wisdom of this Measure, particularly as regards its Operations in the Native Army, and that the general Opinion is in favour of retracing our Steps as soon as practicable.

7 The Minds of the Native People of India are so constituted that the Fear of Corporal Punishment is the best Preventive against Theft and Felony that exists, for as to Imprisonment, that Punishment conveys no Fear whatever with it.

8. To abolish flogging appears to me at the present Period to be a very injudicious Measure, and that is the Opinion of all the intelligent Native People whose Opinions are worth asking in the Provinces.

9. The Law Commissioners say that the Abolition of flogging has not been proved to have been injudicious

10. How much Proof do they want? When have they searched for Proof? If the Abolition of flogging Thieves had been extended by Lord Bentinck to these Provinces of Madras we should have had plenty of Proof to offer of its being an injudicious Measure by this Time.

11. The Law Commissioners have merely alluded to the Objections raised in Bengal to the Abolition, by Magistrates, as regards flogging the subordinate Agents of Police for Neglect of Duty; but we are not informed of the Sentiments of the Bengal Magistrates as to its Effect on Thieves and Felons.

12. If Corporal Punishment is to be abolished for Thieves before they come to the Gaol, then the same Reasons will apply for its Abolition as a Part of Gaol Discipline; and I beg to submit, for the Consideration of superior Authorities, how the Discipline of the Gaol is to be maintained without recourse to this Punishment when necessary.

13. The Law Commissioners are much mistaken if they suppose the Measure of abolishing Corporal Punishment for Thieves and Felons will gain the British any Credit or additional Estimation with the People of India, for they will merely despise us for our mistaken Leniency towards the worst Classes.

14. What they seek for at our Hands is more Rigour, prompter Punishment, and summary Justice, and better Protection against Gang Robbers; and their Attention is much more directed towards an Abatement of their Assessments of Revenue than towards an Abatement of Severity towards Thieves and Felons.

15. In abolishing flogging the Law Commissioners seem prospectively to suppose a Discipline and a Severity of Hard Labour, &c. &c. in Gaols, which is to make up for it, but which is all to come, and it is not known whether such Reform is practicable or not, or what Expenses will be required, &c. &c.

16. I beg to recommend that this great Omission in the new Code be rectified, and that flogging be provided for,—effectual and severe flogging,—capable of deterring and preventing Crime, from Fear which is the great Object of all Punishments, and which we ought to avail ourselves of as much as possible.

17. I conclude this Opinion will be expressed by a great Number of experienced Public Servants, and among them I observe already Mr. Blacquiere of Bengal, One of the most experienced and intelligent Officers in Police to be found. His Evidence is dated 28th April 1838, before the Committee of Police.

I beg leave further to state my Opinion, that the Law Commissioners have fallen into an Error in not awarding Capital Punishment for Dacoity or Gang Robbery, and that their Reasons for this Lenity, as discovered in the appended Notes, are unsatisfactory and inconclusive.

18. The Law Commissioners seem to suppose that this Leniency will be a greater Security to the Lives of the People who are plundered; but this is, I think, quite erroneous.

19. Gang Robbers, when they meet for the Purpose of plundering a House, do not regulate their Conduct according to the Code. If they meet with Resistance which they can overcome they will murder, probably, those who resist, and it may happen that some Murders are unintentionally perpetrated in torturing the Householders or the Females; but such Things spring out of Circumstances on the Spot, and cannot be provided for by Enactments.

20. The grand Object is to put down this enormous atrocious Evil, prevailing all over our Provinces, as if there was no Police or Laws, or Government or Executioner.

21. Past Experience shows that the Imprisonment for Life, for Fourteen Years, and Transportations, has not had nor ever will have the least Effect in putting down Gang Robberies.

22. Here again the Law Commissioners seem to suppose a Reform in the Gaol Discipline, &c., &c., &c. will come in force; but this is prospective, is an Experiment, and at all events will not act in terror on the Minds of these People.

23. Leaders will organize Gangs just the same, poor People of all Kinds will come to the Call just as they have hitherto done, until it is generally known that any One who goes to a Gang Robbery will suffer Death.

24. When this is proclaimed in the Provinces we shall see some Effect, and procure some Peace for the defenceless People of Property, who are at present entirely at the Mercy of any Leader of a Gang who resolves to plunder them.

25. In the Opinion I have formed on this I again find Mr. Blacquiere in aid.

" Question. To what particular Causes do you attribute this Crime (Dacoity) ?

" A. To the Lenity of the Punishment principally.

" Q. What Punishment would you propose ?

" A. Death invariably, whether attended with aggravated Circumstances or otherwise, being convinced that that would occasion a total Extinction of the Crime, and that the Atrocity thereof fully calls for such a Punishment.

" Q. Why would you make no Difference between the Punishment to be inflicted for Dacoity attended with simple Assault, and Dacoity attended with Murder or wounding ?

" A. Because it is only in Cases where the Dacoits meet with no Resistance that one or the other does not occur ?" *

* "Hunkaru," 25th April 1838.

26. I feel so apprehensive of unnecessarily detaining the Attention of the superior Authorities on this Subject, that I have deemed it better to curtail a great many Observations founded on Facts and Reports, &c. &c., and shall therefore conclude with remarking that the Law of Masters and Servants is left in a very uncomfortable State in the Penal Code, and that in such a Foreign Land as this is, where Strangers, and particularly young Persons, are constantly arriving from Europe, exposed to the Treachery and Insolence of practised Servants at large Cities, some specific Enactments had better be made for the Protection of the English, and Punishment of the Servants for Breaches of Contract and Desertion, as well as for " Palanqueen Bearers " only.

27. Loss of Place to Servants in Europe is a severe Loss, but to these People it is a very slight one, easily repaired; and the Argument of the Law Commissioners, which is to the Effect that where there are good Masters there will be good Servants, does not apply.

28. Whole Sets of Servants constantly desert young Officers after a few Marches to join Regiments, after they have cheated him out of all his ready Cash, and the Misconduct of Servants generally to Ladies is often just as distressing as that of " Palanqueen Bearers," when they are unprotected.

29. I have herewith submitted the Observations of the Register and Sheristadar of this Court, and of Reddi Row, the late Dewan of Trivancore.

I have, &c.
(Signed) F. M. LEWIN,
Civil Judge.

With regard to the Punishment of Death, which has been declared against the Crimes of Murder, and against the highest Crime that can be committed against the State, only, the Reasons adduced by the Commissioners for entirely withholding it as a Punishment for Gang Robbery, Rape, or Mutilation, viz., the Fear, in the first place, of creating an apparent Equality in the Heinousness as respects these Offences, and Murder, and in the next, that if the same Punishment is awarded for one Crime as for the other that Murder would be more frequently committed by the Perpetrators of the other Three Crimes than when the Degrees of Punishment are proportionate, i.e., a lesser Degree of Punishment than Death being awarded for the latter by way of " Inducement " to the Perpetrator of the latter Crimes to spare the Lives of their Victims, I am of opinion that they appear to me to be to a certain Extent founded upon mistaken Ideas of Leniency and Mercy, and thus erroneous. The Crime of Murder is, in the first place, so abhorrent to Human Nature, that, though it is indeed too often, even as the Law at present stands, an Accompaniment to the Crime of Gang Robbery, still I do not think that the Perpetrator of the latter would be induced to commit so horrible a Crime as wilful and deliberate Murder for the Reasons mentioned in the Note A., viz., that by Murder he may often hope to remove the only Witness of the Crime which he has already committed, because the Witnesses to the notorious Gang Robberies that occasionally take place are very numerous, and for the Murder also there would be no Lack of Evidence; for the Offence constituted Murder may be even the accidental killing of another of the defensive Party, when really only gentle Force might have been used (comparatively speaking), in consequence of the assailing Party being engaged in the *illegal* Act of Robbery. But this Consideration does not in the least deter the Perpetrator from reiterating the whole Scene at the next Occasion.

The Object of Punishment in the Suppression of Crime can only be effected, as has been proved from the earliest State of Society, by the Fear of Punishment, which Fear it is absolutely necessary to *effectually* establish, and which is no easy Matter with the notorious Apathy of the Native Character. Thus what is required to put a Check to Dacoities is a Fear of some Punishment more terrible than that which they are perfectly aware now awaits them upon Conviction. The only Rule for the Measurement of Punishment is Expediency; for as Crime increases so must also Punishment increase.

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This Crime is attended with Two Aggravations almost invariably ; the one Repetition, and the other Cruelty (for I now refer more particularly to the Punishment of the Ring-leaders in Dacoity). Repetition shows that the Offender is hardened, and the Extent of Injuries inflicted by Violence or Terror is unlimited. To suppress this, therefore should be the chief, the first Concern of the Legislature ; for Life and Safety is endangered as well as Property, and in addition to this the State of Society has become wretched from the constant Sense of Insecurity. As Gangs of Robbers become more formidable and desperate, the Difficulty of defending the Public against them is also greater. It is therefore necessary in Dacoities that the Ringleader or Principal, or the Man who strikes the First Blow, should be punished in a severer Manner than his Accomplices ; not so much on account of the Distinction in the Guilt, but to throw an Obstacle in the Way of others to determine who shall begin the Deed, and who is most willing to expose himself to greater Danger than his Associates ; and this also must prove who is most hardened, and the fittest Object for Punishment.

Sir Mathew Hale's Words may fairly be quoted in this Place as applicable : " When " Offences grow enormous, frequent, and dangerous to the State, or destructive and " highly pernicious to Civil Society, (such indeed is Dacoity become,) severe Punish- " ments, and even Death itself, is necessary to be affixed to Laws, in many Instances, by " the Prudence of the Lawgivers."

That no Obstacle is at present thrown in the Way of the hardened Ruffians who lead these Dacoities does not require any Illustration. A Reference to the last Circuit Calendar of any Zillah Court will sufficiently prove this. That some Obstacle *is* absolutely necessary is equally apparent ; and none but the Liability of the Sentence of Death being passed against them will, it may be confidently asserted, ever produce the Effect so much to be wished for. To check Gang Robberies, then, the Fear of Capital Punishment appears requisite, as is the Case in England.

As the Law now stands, a Party collect themselves, under the Guidance of any determined Villain, for the Purposes of Robbery by Force, without thinking or caring what may be the Consequences of any Violence that they may be obliged to use to perpetrate their Crime, well knowing that, let the worst happen, and they be captured, that a few Years Imprisonment, in Ninety Cases out of a Hundred, is the most that they will receive, even if they are identified at all.

For Examples of the good Effects of Dread of Death for Gang Robbery we may look to the French and other Colonies in India. A Gang Robbery is hardly ever heard of in these ; and the Proportion of these Offences in them, compared with any Portion of Country Villages or Towns of a similar Extent in our own Territory, would be almost incredible.

With regard to Rape, the Punishment of Death for this Offence would be looked upon as too severe, in the present half-civilized State of India, and would, in consequence, be considered excessive, and would create Disgust and Abhorrence in the Eyes of the Public ; and the Amount of Punishment being looked upon as inadequate to the Amount of Crime committed, the former would be considered the greater Crime of the Two.

It is very frequently the Case that the Head Man and sometimes others also of a Gang of Robbers are Men of much larger Property and Means than is the unfortunate Victim of their Villany. Such, on Conviction of the Crime of Robbery, justly meet with their Deserts in a criminal point of view. The Law of England looks upon all such Offences in a public Light only, and Punishment is administered according to the Amount of Injury inflicted upon Society at large ; and, with a view to the Prevention of the Recurrence of the Crime, the private Interests of Individuals must always bend to the greater Advantages to be derived by Society at large. However, on this Point Opinions have widely differed and changed.

The Outrage committed against Society, in a Case such as I have alluded to, is indubitably great ; and the Atonement demanded should be in a Proportion great. But the Culprit, when he does come out of Gaol again, whether at the End of Seven or Fourteen Years, is still the great Man and rich that he was before Conviction ; nay more, for unless the Property found in his Possession at the Time of his Apprehension can be identified to the full in Court, he or his Friends are able to claim it, and during the whole Time that this Scoundrel is in Gaol, his Friends, and particularly his more immediate Relations, are revelling in the ill-gotten Wealth already collected during his numerous successful Dacoities. I would therefore venture to suggest, that when the Amount of Valuables, &c. can be fully and exactly ascertained, and proved beyond Doubt to the Satisfaction of a Court of Justice by the suffering Party, that a Civil Action should lie against the Ringleader for the whole Amount proved, who should be compelled to discharge the same, according to the usual Process in the Civil Suits (a Discretion being left to the Civil Power to allow for Exaggeration). In Cases where personal Injury is sustained, Action for Assault conjointly with the Accusation of Gang Robbery might lie, and for which an additional Fine might be imposed leviable in the Manner before mentioned, the whole or any Portion of the same being given to the Sufferer, according to the Discretion of the Judge.

The old Governments of India used to punish many serious Offences by Mutilation of some Part of the Person. On our Government being established this Mode of Punishment was very properly done away with, and in its Stead the Rattan and Imprisonment

substituted. Since this, again, the Cat-o'-Nine Tails had been introduced instead of the Rattan, to regulate the Amount of Corporal Punishment more equally. It is notorious that the only Punishment that the Natives are afraid of, next to Capital Punishment, is the Lash ; and if anything ever does deter them from the Commission of an Offence it is this. It is equally notorious that they look upon Imprisonment (with or without Hard Labour) as anything but a severe Punishment ; on the contrary, many Prisoners, on being released, have been known to say, that before a Fortnight was over their Heads that they would be back again. Has any one ever observed the slightest Sign either of Contrition or Sorrow depicted by a Prisoner on receiving the Sentence of Imprisonment even for Fourteen Years ? The Generality of the Convicts are of the very poorer Classes, who in a State of Liberty would have to work much harder to gain their daily Pittance, and which, when they had got it, would be infinitely worse than what they would get were they in Gaol. If the Power to inflict Corporal Punishment is wrested out of the Hand of the Law, its Efforts will be instantly unavailing for the Purposes of Punishment, especially in those Cases of pilfering and stealing which even now come before the Notice of every Police Officer daily. Shocking as the Assertion may appear, it is too evident that from the present half-civilized State of the Generality of the Classes of India they can only be kept in fear of the Law by the Scourge.

The Lash, and the Disgrace, &c. attached to it, is strongly urged by the Commissioners ; but it may be here observed that those only feel the Disgrace of it who are of good Family and Caste, and towards whom the present Law has always left something to the Discretion of the Judge presiding. Again, the Cases in which the Lash is used towards Men of good Caste are generally of heinous Nature, such as Gang Robbery, Perjury, &c., and which are always committed with Deliberation ; and these Persons are perfectly aware of the Fact that the Lash may be and often is used against such as themselves for these Offences. The Youth of high Caste Parents are hardly ever (never, I was going to write,) subjected to this Punishment ; but it is to the hardened Scamp that this Mode of Punishment is administered, and only, too, when other Methods have been tried and have failed, or when the Heinousness of the Offence demands it. A mistaken Lenity to the bad is positive Oppression to the quiet and well-disposed.

In respect to the Punishment of Fine, or its Alternative, Imprisonment, the Love of Money, I think, may be put down, as a general Rule, in this Country, to be far paramount to the Love of Liberty, and, as the Commissioners observe, ought, on that account, to be more systematically attacked for penal Purposes.

In Civil Cases, when a Fine is imposed, the Delinquent is imprisoned till the Fine be paid, when it is moderate, or forced to discharge the Amount by his Property being sold to the Extent of the Amount required. Since, then, it is allowed that Imprisonment "without Labour" is in the Eyes of the Natives far preferable to paying any Fine that would be intended to act as a Punishment, the Amount might be levied by Distress after a certain Period of Punishment has expired (say One Quarter), and the Delinquent still continues to withhold the Amount imposed ; and the Period of Imprisonment might, as remarked by the Commissioners, act as a Punishment for his Obstinacy.

"The Object of the Penal Law is to deter from Offences, and this can only be done by means of Inflictions disagreeable to others."

The Crime of Perjury and Forgery are amongst the most common that fills the Calendars of our Courts of Justice. The Blackness and Enormity appears principally to depend upon the Rank and Influence generally of the Offender ; and it is often impossible to get at its very Root, and why ? Can it be credited ?—From the enormous Magnitude of the Offence. There are no Investigations so tedious, so fatiguing, or often so unsatisfactory as those that come under the above Head ; and to put some Sort of *strong* Check to this should be the Object of every Legislator for India. The Heinousness of the Offence, whether it succeeds or not in perverting the Path of Justice, is too palpable to require pointing out. Now even with the Punishment which is now awarded to a Conviction of the Crime, viz., from Four to Seven Years Imprisonment with Hard Labour in Irons, Lashes to the Amount of 150 with the Cat-o'-Nine Tails, and, in addition to this, Exposure in the Manner usually denominated "Tusheer," it is too apparent that the Offence in no way whatever diminishes ;—rather the contrary. How, then, to put a Stop—even a slight Check—to this, is the Question ? If Punishment such as has just been mentioned fails in its Effects, what can avail ? And it is difficult to say. One Cause of the Prevalence of this Crime appears to be the Dilatoriness with which the Offence is visited with the Punishment that it deserves.

A Case of Forgery or Perjury is detected by the Magistrate ; by him the Delinquent is forwarded to the Criminal Court, perhaps just at the Close of a Sessions, and it is committed for Trial before the Circuit Court, which arrives some Six Months after the Committal. If sentenced to Corporal Punishment, a Delay again occurs before the Sanction of the Foujdary Udalt is obtained for it to be carried into execution. Thus the Culprit is not brought to Punishment for many Months after he has been detected in the Offence ; and when all the Recollection—at least the vivid Part of it—has worn off, and the Crime is forgotten in his Village, and the Punishment not heard of. What appears to be required here is more Despatch ; that the Punishment should follow Conviction with more Rapidity ; that Justice should be appeased as soon as possible
after

after the Certainty that the Outrage that it has sustained is proved.* The judicious but rigorous Application of the Lash in Cases such as these, and summarily used after Conviction, and also in the most public Manner, the Offence being always freely published abroad beforehand, would, I am inclined to imagine, produce a very beneficial Effect, as far as regarded the better Administration of Justice and Prevention of these Offences.

(Signed) J. J. COTTON,
Assistant Criminal Judge.

T. A. ANSTRUTHER Esq. to the REGISTER to the PROVINCIAL COURT OF CIRCUIT,
Southern Division, Trichinopoly.

Sir,

Coimbatore Auxiliary Court, 29th June 1838.

I HAVE the Honour to submit my Report, as called for, upon the Penal Code. Without the Code of Procedure it is impossible to form an Opinion on many Parts of it; and I have accordingly omitted many Remarks that without the Knowledge of the Code of Procedure would be premature. I shall submit, first, a few particular, and, lastly, a few general Remarks.

Clauses 43 and 44 are exceedingly unjust.

Clause 51. It seems vain to sentence a Person to a Fine and Death,--as, why should he pay it? If he did, his Heirs, not he, would suffer.

Clause 52. A Fine being illimitable should not be commuted to One Quarter of the regulated Imprisonment.

Clause 54. Seven Days is not equivalent to illimitable Fine.

Clause 57. The Death of the Defaulter in Gaol, possibly by reason of his Confinement, should be a Set-off against much or all of the Debt.

Clause 62. Will excuse our Village Tularies if they torture by Order of the Monigar.

Clause 86. There ought to be a very great Difference between Clauses 1 and 2 and 3 and 4. It must be allowed that he who instigates and conspires to commit a Crime is more criminal than he who, being invited to join in the Crime, refuses, but omits to inform the Police, yet Clauses 88 and 97 assimilate the Punishment.

Clause 96. The Punishment is too slight. An Instigator has completed his Crime before the doing of the Act instigated is begun, and whether the Perpetration of the Offence be frustrated, or the Parties repent and refuse to commit it, the Instigator is not the less guilty.

Clause 109. Means, it is presumed, "whoever of our Subjects;" not whoever without Exception.

Clause 137. Would at once fall upon the Missionaries, and would be a strong Incitement to rioting, as the Rioters might either injure the Insulter in the Riot, or, taking advantage of their own Wrong, might, under this Clause, plead their own Rioting against the Party they had already injured.

Clause 190. Exception, Illustration A. If A should prove to the Court falsely that he was at that distant Place, the Prosecutor would probably be liable to a Charge of Perjury.

Clause 193. A Person may, I believe, at present, dispose of his Property as he best can, the Courts having Authority to prevent but not to punish such Proceedings. A Person unjustly sued, and finding false Evidence got up against him, and likely to influence the Decree, may well sell his Property.

Clause 201. Escape pending Inquiry is not provided for.

Clause 213. Is very wide.

Clause 217. Too severe. The Punishment now found to be sufficient is, under Sec. XXI. Reg. I. of 1812, by Circular Order of Foujdaree Udalt, 8th May 1815.

Clause 265 to 274. Might be condensed.

Clause 266. Is too mild.

Clause 267. Whoever conveys a Person in a Vessel, and endangers *that Person's* Life is punishable, but the Lives of all who may sink being endangered, the Boatman is guilty by the Act of the Offence of 266, yet by Clause 58 is not punishable cumulatively.

Clause 272. Provides for what should be and must be done by the Public Authorities.

Clause 321 and 322. This would exclude forcing Robbers to restore the Property stolen.

Clause 357. Will not answer. The Parent and Kidnapper may collude to sell a starving Child as a Slave; to save his Life they have done a good Act.

Clause 363. Illustration (m) is scarcely Theft. Illustration (c).--many a Person would take the Property as Security for his own Due, and then honestly prosecute to justify the taking, meaning to restore what he had taken should he fail in the Suit.

Clause 365. Theft from a Tent or Vessel used for Custody of Property is excluded.

Clause 392. The Intention may be honest to the Employer, but fraudulent to the Dupe. A Person robbed pretending to be a Daroga, and terrifying the Robbers to give up the Booty, illegally pursues legal Rights, and under Clause 150 is liable to Punishment, and the lowest Village Toties and Tularies who now by Cunning and Fraud cheat Persons out of their illegal Gains may be hindered in their Operations.

Clause 412 to 414. The Limitations seem arbitrary.

Clause 437. The Limitations and Specifications are perplexing.

Clause 448. The wording should be "likely that the same *will* be used," for it is certain every Man's Seal "may" be used.

Clause 453. Altering the Address of Letters should be specified as punishable.

Chapter XXIII. Imprisonment of the Deserter is not Relief but certain Loss to the Deserter, as he must contract afresh. The Deserter should be forced to return, and fulfil the Contract.

Chapter XXIV. This Chapter and the Note had better be left out.

Chapter XXV. The whole Chapter had much better be left out ; it would legalize all Species of Insult.

Note A. The Principle asserted in this Note may be questioned. Unseen Punishment, where the Fate is a Mystery, is no Example, for the Relatives and Friends of the Sufferer have no Means of knowing whether the Offender be dead or alive, out of Custody or escaped from it, and moreover it can be known but to few. Ocular Example, where the Fate is no Mystery, and is seen by all, is best ; and it is the Duty of a Government to create as great an Effect as possible with the least possible Quantity of Punishment. The Punishment of Transportation is as much dreaded, perhaps, but not more so, than Death, and Death is not much cared for, and where it is, the Impression is transitory. Moderate Punishment often repeated, such as Twenty Lashes at a Time, repeated Five Times at Intervals in the Village where the Culprit resided, would do much more Good in the way of Terror than 150 inflicted at once near the Court, and much more than Imprisonment or Transportation. The Principles on which the Code proposes to levy Fines seem very good, but the Abolition of Corporal Punishment is impracticable.

Note C. Seems to raise more Difficulties than it solves. By Reg. XX. of 1802 of the Madras Code, Offences against the State are disposed of, and it is as Head of the Government of the State of India, and not as Head of the Government of Great Britain, that the King could punish Rebellion against Himself. The existing legal Powers of Government have been found quite sufficient in late Years.

Note E. Is very imprudent. The Government have now ample Power to punish their Native and European Servants, and the Respect entertained by the Natives for the Character of Public Officers, and their Veneration for the Duty, will be much shocked and weakened by these Rules, which take equal Care to guard against Forgers, Thieves, and corrupt Judges, and press upon the Attention of the Country that there is nothing between a Public Servant and Corruption of the basest Kind but the Penalty.

Note F. Contains a very mischievous Principle : viz., that Disobedience to a local Order is legal, and not punishable, except when in Appeal the Upper Court is satisfied that the Disobedience was attended with Evil or Risk. If the Punishment were slight, it would not repair the Injury done to the local Authority ; if severe, the Code, having in this Clause caused the Fault, should not punish it.

Note I. This might direct Attention to the forging of the old Arcot Rupees.

Note J. If the Conduct of Government has been characterized by eminent Judgment and Success, new Rules will do more Harm than Good.

The Spirit shown in the Review of the existing Codes of Regulations, where riding over a Field in Hunting is said to be a Capital Offence under the Bombay Code, and the Lesson of Quibbling afforded in the Dissection of Mr. Livingstone's Definition of Theft, would excite and teach a Spirit of Evasion and Distortion of Words that would embarrass the Administration of the Code. The Plainness of some of the Illustrations will cause it to be thought, either that the Provisions of the Code are fruitful and certain Sources of Error, or that the Understanding of the Judges and Magistrates who will have to administer it is so confused that but for the Caution such Errors would infallibly be incurred.

In conclusion, it does not appear to me that the Madras Code is so deficient as to render the Adoption of a new universal Code preferable to the Improvement of the old. The Advantages to be gained by the Change should be clear and great ; whereas they are doubtful and small, the Disadvantages attending Change being certain and obvious.

I have &c.

(Signed)

T. A. ANSTRUTHER,

Acting Joint Civil Judge.

J. BLACKBURNES Esq. to the REGISTER to the PROVINCIAL COURT of APPEAL and
Circuit, Southern Division, Trichinopoly.

Sir,

Madras, 12th May 1838.

1. On the 23d ultimo I was favoured with Copy of the Penal Code alluded to in your Letter of the 18th of the same Month, and I beg to assure the Court, that if at any Point of Perusal of the Text a Doubt arose in my Mind it was immediately removed by the Illustrations, Explanations, and Appendix, which showed the same Doubts had not been overlooked, but had met mature Consideration.

2. I do not think it right to withhold my Answer to your Letter till the Code has been considered by others well qualified to give an Opinion, but if any should be given me hereafter worthy of being communicated to the Court, I shall not fail to address you again.

I have, &c.

(Signed) J. BLACKBURNES, Magistrate.

E. J. BIRD Esq. to the REGISTER to the PROVINCIAL COURT of CIRCUIT, Southern Division.

Sir,

Joint Magistrate's Office, Courtallum, 29th June 1838.

PARAGRAPH 1. In obedience to your Communications of the 18th April and the 4th and 20th instant, I lose no further Time in submitting a few Remarks upon some of the Subjects to which the proposed new Criminal Code relates; but as the Book reached me only at the End of April, and my Time and Attention have ever since been and are still principally occupied in making the annual Settlement of the Division under my Management, I have not had sufficient Leisure to arrive at a satisfactory Opinion to myself respecting the probable Effect of introducing the new Criminal Code into this Part of India; still less have I had Opportunity to compare my Sentiments with those of any other Person; so much, also, must the Operation of the Law depend upon the Mode in which it is to be administered, and which cannot be ascertained before the Publication of the Code of Procedure, that it seems to me most difficult to arrive at any satisfactory Conclusion.

2. Perhaps no Class of Offences is more prevalent in the Province of Tinnevely than that which prejudices Public Justice, in consequence of which the Ratio of Convictions to the Number of Criminal Investigations is much less, I believe, here than in any other equally extensive Tract in India. Although, doubtless, comparatively free from some of the graver Crimes, as Robbery accompanied by Homicide or aggravated personal Violence, we have no Reason to think that this District affords fewer Instances than others of petty Theft, or Assault, or malicious Injury, yet Complaints of the latter Species of Offences are almost unknown, while Charges of Highway and Gang Robbery are of daily Occurrence. Of these a vast Majority are altogether unworthy of Credit, and of the others, very many fall to the Ground because the People will not be contented with such Evidence as the Case really affords, but call as Eyewitnesses some of their Friends, who, being tutored only as to the Facts laid in the Complaint, are not able to endure Cross-examination. When false Testimony is thus given in Investigations before Native Police Officers there is almost complete Impunity, for Witnesses are specially protected by Law from Prosecution under the Construction of Reg. IX. of 1832, contained in Circular Order, Foujdary Udalt, 28th December 1835; and with regard to Prosecutors, however clear it may be to the local Officer who examines the Case that the Charge is false and malicious, the bare Inspection of Documents so seldom conveys the same Certainty to the Mind of a Judge that Punishment is most rarely awarded.

3. Under the new Code, the Offence of "fabricating false Evidence," in Cases before Native Police Officers having the same Powers they now possess, would be punishable; but, unless Authority to bind Parties by Oath, or Sanction tantamount to an Oath, be given to them by the Code of Procedure, the Crime of "giving false Evidence" by Witnesses will enjoy the same Impunity that it hitherto has done, and Prosecutors will be liberated from the feeble Check at present imposed upon them by Reg. IX. of 1832.

4. The next most important Point not sufficiently provided for, as it appears to me, in the Code, is that relating to the Punishment of public Servants for Disobedience of Orders, or Negligence in the Discharge of their Duties. By Clause 149 such Persons, for the above Description of Faults, are made subject to Fine extending to Three Months Salary, or thrice the Amount of legal Fees during any Month, or One Fourth the clear annual Value of Land, according as they may be paid by fixed Salary, Fees, or Land. There are, however, some Classes of public Servants, over whom it is most desirable to possess the Power of exercising Coercion, who are paid in none of these Ways, or if so paid the Amount of whose monthly or annual Receipts cannot be accurately ascertained, and some who receive no Remuneration whatever for their Services.

5. The Definition of the Word "Judge" in Clause 12 takes in Village Moonisiffs and Punchayetdars; and all Judges, by Clause 14, are made "public Servants." As neither Village Moonisiffs nor Punchayetdars, as such, are stipendiary Officers in this Part of India, it follows that under the new Code no Negligence nor Disobedience

of Orders would subject them to Punishment. To be superseded in their Situations would by many be considered as a Favour. Our present Regulations provide for the Punishment of Punchayetdars, in certain Cases; and in the Absence of particular Enactment on the Subject the Power of fining Heads of Village Police is exercised, under the general Authority vested in Heads of Departments to employ that Method of punishing their subordinate Native Officers.

6. Another Class of Persons coming under the Definition of public Servants in the new Code are the Village Watchers. These Persons in Tinnevely have, in almost all Villages, Lands or Funds of some Description or other set apart for their Remuneration; but in many Cases these Payments are not made to the Individuals who actually perform the Duties, but to those who are the Heads of the Class of Watchers in the Village, and employ their Underlings to do the Work, but whether for a fixed Rate of Pay or for what other Consideration it would in many Cases be impossible to ascertain. In these Instances the Punishment for Negligence, if it fell at all, would not fall where it is most desirable it should.

7. The Inconvenience now adverted to might perhaps with Advantage be obviated by adding a few Words to Clause 149, providing some Penalty for public Servants who have no ascertainable Remuneration for the Discharge of their official Duties.

8. Escape of Prisoners, whether before Trial or after Conviction, is unfortunately frequent, and there is too often Reason to suspect the Connivance of their Guards; but this Connivance is so difficult to detect and prove that when it can be established a very severe Punishment alone can be expected to deter others from committing this Offence. But by the new Code, supposing the receiving of a Bribe for favouring the Escape to be proved, which would scarcely ever happen, the Punishment under Clause 138. might extend to Three Years rigorous Imprisonment, with a Fine superadded; but in all other Cases no greater Penalty than that permitted by Clause 145., viz., One Year's simple Imprisonment, with Fine, could be awarded.

9. With the Exception of these Three Descriptions of Offences, viz., the making and supporting of false Accusations, Negligence, and Disobedience by unremunerated public Servants, and favouring the Escape of Prisoners by their Guards, I do not recollect any of common Occurrence in these Parts, which, being apparently intended to be made punishable by the Code, have possibly been not adequately provided for.

10. There are, however, some Actions and Situations, involving no actual Commission of Crime, which hitherto have rendered the Individuals doing those Actions or found in such Situations amenable to penal Inflictions, for which this Code provides no Regulations, such as having no ostensible Means of Livelihood, being found in possession of Instruments commonly used by Housebreakers, sending Challenges,—all those Cases, in short, where both in England and India the Law requires Persons to give Security for their good and peaceable Behaviour, or to suffer personal Restraint. It is, however, probably intended to provide for this Class of Cases under some other Code.

11. But there is One Transaction, I fear of not very uncommon Occurrence, which, so far as I know, has never yet been declared criminal, but which, from every Motive of Humanity and Morality, it is greatly to be wished were so. I mean the Disposal of Female Infants by Parents and Guardians to be brought up as Dancing Girls in the Hindoo Temples. It would not, doubtless, be expedient to interfere with Females who have arrived at Age to be competent to determine for themselves, if they choose to embrace this Profession, nor perhaps with the Education of Girls born of Mothers who are Dancing Girls, and from these Sources this unfortunate Class will always be so amply recruited that there need be no Apprehension lest public Feelings should be excited against such a Law. A Proclamation of a former Magistrate of Tinnevely prohibits the Purchase or Adoption by Dancing Girls of Female Infants of other than their own Caste; and I have myself taken Advantage of this Order to annul a Transaction of this Description. From what I then observed I have no Hesitation in saying that the general Feeling is much in favour of such a Regulation as I have taken the Liberty to advocate.

12. I have thus imperfectly, and I fear without due Consideration, hazarded my Remarks on the First Point suggested in Mr. Macnaghten's Letter, Copy of which was circulated in your Communication of the 4th instant, viz. "as to whether Provision is made in the Code for the different Offences which are prevalent." With respect to the other Subjects on which Opinion is called for, viz. "the Necessity of the proposed Enactments, and the Adoption of the proposed Penalties, with reference to all the Circumstances of the Country, and to the Habits and Feelings of the large and various Population which will be affected by them," it would not become me to say more than that I see no Reason to suppose that the passing of the Code into Law would be otherwise than beneficial, or be regarded with any Hostility by the People of this Province.

I have, &c.

(Signed) C. J. BIRD, Joint Magistrate.

N. W. KINDERSLEY Esq. to the JUDGES of the PROVINCIAL COURT of CIRCUIT,
Southern Division, Trichinopoly.

Gentlemen,

Tanjore, 3d July 1838.

1. With reference to your Register's Letters noted in the Margin, I have the Honour to inform you, that though it is impossible to peruse the proposed Penal Code without Admiration of the Labour and Talent bestowed upon its Composition, I entertain very great Doubts of its practical Applicability to the present low State of Civilization in the British Indian Empire. 18th April 1838
4th June 1838.
20th June 1838

2. In the first place, the Practicability of its Translation into the vernacular Languages of the Country appears to me to be more than doubtful; their Poverty will hardly admit of the Expression of such nice Definitions and fine drawn Distinctions as abound in every Part of the Code, and require the close Attention of an educated Englishman to comprehend even in his own Language.

3. Its Lenity I consider to be also quite unsuited to the State of Society in India. The entire Abolition of corporal Punishment, when there are such Multitudes to whom the only other Penalty to which they are liable is no Punishment, is I think to be lamented.

4. Transportation beyond the "Black Water" is certainly still looked upon by the Natives of India as a severe Punishment, but the Feeling of Horror with which it was once contemplated has been very much diminished (to say nothing of the numerous Returns of escaped Convicts previous to the Expiration of their Sentence) by the Frequency with which our Native Troops are now sent on Service beyond Sea, of which there cannot be a stronger Evidence than the Extent to which the Emigration of Labourers to the Mauritius, &c. has lately taken place, and the Number of Natives above the Class of Labourers who go to seek their Livelihood in our recently acquired Settlements to the Eastward; and I very much doubt whether it will be found to supersede the Necessity for Capital Punishment to putting down what may be called the national Crime of Gang Robbery.

Vide Note 1

5. The Proposition of making the Property of Persons sentenced to Fine liable for the Amount for a Period of Six Years, instead of commuting it for a certain Length of Imprisonment of either Description, appears to be open to very serious Objections. How the Distress is to be levied will of course be regulated by the Code of Procedure; but it is presumed that it must be either at the Instance of the convicting Magistrate or of the Prosecutor; whichever it may be, its Enforcement will entail never-ending Suits with Sharers, Mortgagees, &c. If the Fine be trifling, unless to gratify the Malignity of the Prosecutor, it will never be recovered, and thus occasion the twofold Evil of allowing Persons sentenced to go unpunished (for Seven Days Imprisonment to Ninety-nine in One hundred is no Punishment), and of encouraging a malignant Recollection of Injury in the Prosecutor. The Object is to enforce Payment of the Fine, and the simplest Way of doing so, when there are the Means, appears to be the existing One, of making an irksome Period of Imprisonment the Alternative.

6. The Anomalies to which, as in the Matter of Marriage, the Framers of the Code have been reduced, are inseparable from the Principle of its universal Application to numerous Nations, differing from each other in Religion, Language, Manners, Habits, and Customs, at least as much as those comprised in the Continent of Europe. The natural Foundation of every Code is the religious Creed of the People for whose Government it is framed. A uniform Code for People of Creeds so various and opposite as those of the Subjects of British India must be founded upon some other and more general Basis, to the Establishment of which for the general Benefit Sacrifices must be made by each of the component Parts, the Feelings of the Minority on each Occasion being made to succumb to those of the Majority; and, except that the Proportion of Polygamists by Religion are a much larger Proportion of the aggregate Population, there appears no Reason why a Christian should be exempted from the Penalties of Bigamy, in compliment to them, any more than from those of Murder by Strangulation in courtesy to the Thugs or from those of Infanticide in favour of the Koonds, who both consider that they are serving God by such Practices. Such Anomalies, it is to be feared, will be much more numerous in a Civil Code constructed on the same Principle.

7. The Principle of Chapter X. is most admirable, and its Provisions particularly suited to this Country, where the giving and fabricating of false Evidence, and the fraudulent Transfer of and setting up of false Claims to Property, have grown to a fearful Height, and hitherto with almost entire Impunity, under our Administration. Of Offences against Public Justice.

8. I have touched upon those Points which have particularly struck me in reading over the Code; for, under the constant Pressure of current Business, it is impossible within so short a Period to devote to it the Time and Attention it merits. The best Laws being proverbially those which are best administered, it is obvious to remark, that the practical Efficacy of the Penal Code must mainly depend upon the Code of Procedure which is to regulate its Administration.

I have, &c.

(Signed) N. W. KINDERSLEY, Magistrate.

J. SCOTT Esq., JOINT MAGISTRATE, Codekaray, to the ACTING SECOND JUDGE of the PROVINCIAL COURT, Trichinopoly.

Sir,

Codekaray, 3d July 1838.

PARAGRAPH 1. I have the Honour to submit my Opinion on the Penal Code, as called for in your Letter of the 18th April.

2. I am very doubtful of the Possibility of adapting One Code of Laws to the various People and Nations which acknowledge the British Dominion in India, but as far as it is practicable I consider that the Object has been gained in the Penal Code now under Consideration, and as it seems settled that there shall be but One Code of Laws, I do not consider myself called on to discuss that Question, but shall confine myself to the Remarks I have to make on the Provisions of the Code.

3. I am of opinion that the Code is well adapted to meet the Purposes for which Laws are framed,--good Government and Protection of Persons and Property, but I think much of its Efficacy will depend on the Code of Procedure, the Publication of which would be of great Assistance in estimating the probable Effects of the Penal Code. But even supposing it to be capable of being literally translated into the Native Languages, of which I am very doubtful, the greater Part of it is so fine drawn as to be certainly, unintelligible to the Mass of the People, and I fear it will even be found very difficult of Administration by the Native Authorities.

Chapter II. Of Punishment.

4. The Commissioners have entered at length into their Reasons for not punishing with Death any Crimes but Murder and Offences against the State. It is therefore with great Deference that I venture to propose Death as a Punishment for Dacoity; a Proposition I should hesitate to make if my Opinions were not formed on the practical Experience of several Years. Gang Robbery in India is exercised in a regular systematic Method not to be found in any other Country; it is in fact a Trade to which those engaged in it are brought up from their Youth, and are taught to look upon it as a legitimate Means of Livelihood. It is practised by a Class of People distinct in themselves, and who keep almost entirely to themselves, and among whom it is a high Distinction to be a practised Robber. One would suppose that Fourteen Years Hard Labour in Irons, with the Addition of Corporal Punishment, would by this Time have had some Effect on the Fraternity, and diminished the Amount of Crime; but a Glance at the Statement of Crimes committed in the Madras Presidency during the last Six Months of 1837 shows that this Result has not been attained. It remains therefore to provide a Punishment of a more severe Nature, and I recommend that that Punishment should be Death.

5. By the Penal Code, Corporal Punishment is abolished; a Resolution that almost every Magistrate must regret. Until the System of Prison Discipline has undergone such a Reform that Imprisonment for petty Theft can be made really irksome and annoying, I consider it absolutely necessary that this Punishment should be retained. It is evidently not desirable that the Man convicted of petty Theft, and sentenced by the Magistrate to a Month's Imprisonment, should be sent to the Common Gaol, to keep Company with Felons of every Grade. It is also evident that it is impossible for the Magistrate, under existing Circumstances, to make Imprisonment a rigorous Punishment; and this Opinion is confirmed by that of every Police Officer with whom I have ever conversed on the Subject. One of the Objections which the Commissioners make to this Mode of Punishment is, that it is of so degrading a Nature; but I would confine it solely to the Crimes of Theft and Robbery; the Man who commits either of these Crimes is not likely to have a very keen Sense of Honour. I therefore most urgently recommend that Corporal Punishment should not be abolished.

6. Clause 44. gives to the Government the Power of banishing for Life from the Territories of the East India Company, at any Time before One Third of the Imprisonment has been suffered, any Person who is not both of Asiatic Birth and of Asiatic Blood who has been sentenced to rigorous Imprisonment for One Year, or to simple Imprisonment for Two Years. Neither the Object of nor the Necessity for this Provision are very apparent, and by it a Man who has caused voluntary Hurt is liable to be banished for Life. It will be said that in such a Case the Power would never be exerted, nor do I suppose it would, and therefore the Necessity of it is dubious. If it is meant to apply only to such turbulent and dangerous Characters of whom it is desirable to be rid on political Grounds, and from the peculiar Nature of our Position in this Country I am not prepared to deny that such Occasions might occur, it would be much more in keeping with the Dignity of Government to arm it with this Power, to be used at Discretion, instead of waiting till an Opening is made by some trifling Infringement of the Law, and the whole Onus of a despotic Act thrown on the Penal Code. It may be urged that this Power, if discretionary, might be used to get rid of any One who had made himself obnoxious to the Government; but I am satisfied that at the present Day no Government would dare to exercise this Power without such ample Reasons as would satisfy an impartial Judge. It may appear at First Sight more arbitrary and despotic to make this Power discretionary; but in practice it will be found infinitely less so, for if authorized by the express Letter of the Law as a Punishment for a stated Offence, the Government could hardly be held accountable for carrying it into effect; whereas, if left entirely to its own Discretion and Responsibility, a Government would be very cautious how it made use of such a Power.

7. Clause

7. Clause 45. provides that the Government may in every Case commute the Punishment awarded for any other Punishment, and Clause 46. that it may entirely remit it. I think this Power should be limited to the Sentences of Death, Transportation for Life, and Confiscation of Property. In every other Case the Sentence of the controlling Authorities, such as the Provincial and Sudder Courts, should be final. Interference of any Kind with the local Authorities must weaken them, and should be avoided when possible. The Code of Procedure will of course provide for the Degree and Nature of the controlling Power to be exercised by the higher Authorities; but One Thing may be regarded as quite certain, that so long as there is the least Opening for Appeal an Appeal will always be made.

8. I do not approve of Clause 57., which provides that a Fine may be levied at any Time within Six Years after passing the Sentence. If a Man is sentenced to Imprisonment for a fixed Period from Inability or Refusal to pay a Fine, the Imprisonment should acquit him of all Liability for the Fine. If he is possessed of Property, the Fine may be levied by Process of Law; if he has none, it is clear he is unable to pay; and if he acquires Property after the Sentence is passed, it appears to me opposed to the Principles of Justice to make it answerable after the Period of Imprisonment has expired. The Expiration of this Period, the Duration of which should always be specified, should be the Limit of the Liability.

9. Chapters III. to XIII. appear to me to be unobjectionable, and to provide amply for the Offences of which they treat.

10. I do not think that the Punishment provided for the Offence specified in Clause 257. is sufficient. The Consequences of such an Act are so fearful that I am of opinion Seven Years Imprisonment would not be too severe, if committed intentionally or malignantly.

Chapter XIV:

11. I think Clauses 341 and 352 might be omitted, having a great Tendency to increase frivolous and trifling Complaints.

12. Of Offences relating to Marriage. This is a Chapter in which the Inapplicability of One Code to many Nations of various Customs and Habits must be apparent to all. The Rights of Marriage, as enjoyed by One Nation, are so utterly at variance with the Practices of another, that, however cautiously worded and speciously argued, it is clear that the Framers themselves despair of reconciling them. By this Bigamy, except when accompanied by Deceit, is an unpunished Crime; a Law so opposed to the moral and religious Principles of every One professing the Christian Religion that I most earnestly second the Proposal of the Commissioners to retain for the present the existing Law applicable to Christians in India. It appears to me that this Chapter affects none but those who profess that Religion; for as Polygamy is allowed to all others they would have no Inducement and indeed could not deceive a Woman in the Manner therein contemplated, and I am therefore of opinion that the Criminal Law should be framed with reference to the Profession of the Christian Religion. The Reasons for exempting the Parties from Punishment where no Deceit is practised towards the Woman are not apparent. Although the Law makes this Second Marriage legal, it does not make the Children legitimate. Who then does it benefit? It benefits an unprincipled Woman, by procuring her Admission into Society, from which she should have been excluded if she had not gone through the Form of Marriage; thus making it a Law for individual Convenience, and a Screen for Immorality, for it is not to be supposed that a modest Woman would knowingly marry a Man whom she knew to be already married.

Chapter XXIV.

13. In Parts of the Code a Difference is made between Persons of Asiatic Blood and Birth and Persons not so descended, and there appears no Reason why this important Law should not permit a Distinction between Nations professing different Religions.

I have, &c.

(Signed) J. SCOTT, Joint Magistrate.

H. FRERE Esq. to the REGISTER to the PROVINCIAL COURT of CIRCUIT,
Southern Division, Trichinopoly.

Sir,

Magistrate's Office, Coimbatore, 12th July 1838.

I HAVE the Honour to acknowledge the Receipt of your Letter under Date 18th April 1838, requiring me to submit any Remarks which I may have to offer respecting the Penal Code lately prepared by the Indian Commissioners.

2. The Feature which cannot fail to strike every one, even upon a casual Inspection of the Code in question, as mainly characterising the Work, is that which the Authors themselves acknowledge in the Preface prefixed to the Code, and which if objected to must inevitably radically affect the Eligibility of the entire System which it proposes to establish as One of Penal Legislature applicable to the whole of the British Territories. I allude to the Circumstance of the Code being founded, not upon the Groundwork of any existing System which may have received the Sanction of Time and Practice, and the Defects and Excellencies of which respectively may have been tested by Experience, but either absolutely on abstract Theory, or upon Systems which are in themselves founded in a similar Basis, and which were framed for Manners and States of Society widely differing from those under consideration in the present Instance.

Paragraph 6. of the
Preface, Page 2.

3. It is indisputable, that in so far as the Code provides a fixed and uniform Enactment in Cases hitherto disposable agreeably to Mahomedan Law only, it must be considered as having effected a great Improvement in a System originally entirely at variance with the Usages of civilized Society, and which has been under the British Government capable of Employment only in a modified State, and by the Assistance of various legal Fictions and Alterations engrafted upon its original Provisions. But that Law as stated by the Commissioners has been nearly entirely discarded in One Presidency, and has been in a great measure superseded in others, by the Body of Regulations established by the Legislature of each particular Presidency, a Body of Laws which have been framed as Occasion required by those who from Time to Time occupied a Position at the Head of the respective Governments. It is evident, therefore, that in dispensing altogether with the Assistance which might thus have been afforded in their Labours by the Result of the accumulated Knowledge and Experience of those eminent Men who have in succession presided over the Councils of this Country, the Authors of the Penal Code have followed a Course which is liable to many Objections, as substituting a System based mainly upon theoretical Principle for One which, although it must be acknowledged imperfect in many and very important Parts, possessed nevertheless many Advantages as calculated to contain the Elements from the Selection and Arrangement of which the Materials of a Code might probably have been collected embodying the more valuable Opinions of preceding Legislatures, and adapted to the particular Circumstances of the Country and People to be subjected to its Influence, and to the peculiar Position of the dominant Power.

Paragraph 6. of the
Preface, Page 2

4. It is true that, as the Law Commissioners observe, the Penal Enactments of the Three Presidencies differ widely from each other in respect to the Proportion of Punishment assigned to the several Offences to which they refer. This is an Evil, however, inseparable from the particular Circumstances under which those Enactments were respectively framed in the different Presidencies, no Arrangement existing for the Purpose of securing Uniformity in the individual Codes, or for general Superintendence and Control during their Formation. Such Imperfection in Parts, however, cannot fairly be contemplated as involving the Necessity of the entire Condemnation of the Materials of which the whole is composed; nor is it, I submit, to be concluded from the above Circumstance that a System comprising a Digest of the Enactments already in operation in each individual Presidency, with such Alterations and Additions as might appear expedient and practicable, would not have formed a Code of Criminal Jurisprudence which might have been eligible for Establishment throughout British India.

5. Such a Course would have been attended at least with this Advantage, that in lieu of the same Legislation being indiscriminately applied in all Parts of so extensive an Empire, such Provisions as were adapted to local Peculiarities and the Habits of particular Classes of People would be retained in event of the Circumstances which occasioned their Institution being considered sufficient to justify the Distinction being made. No Two Nations of Europe probably differ more in their Characteristics than those situated in remote Portions of the British Territories in this Country, or even their individual Races placed in some Cases in the more immediate Vicinity of each other; as, for instance, the Ryots of Coimbatore and the Moplas and Nairs of the neighbouring Districts on the Western Coast; and in consideration of the numerous Varieties, either as regards Customs, Language, or natural Disposition, into which the aggregate Population is divided, as well as of the anomalous Situation of the ruling Power in India with respect to the great Body of the People, it may fairly be doubted whether a Country thus peculiarly situated should be looked upon as forming an appropriate Subject for the Introduction of a System of this Kind, or whether it might not have been advisable to incorporate at least the Substance of such Regulations as were the Result of partial Distinctions of Manners or Feelings into the Body of the Penal Code, provided that the Tendency of such local Regulations were not the Establishment of a privileged Class among the People for whom it was intended to legislate.

6. As a prominent Instance to this Effect I would beg to allude to the Law of Bigamy, as contained in the proposed Code, which is intended to be applicable to all Parties, to Hindoos and to Mahomedans as well as Europeans and Christians. The Authors of the Penal Code profess to have proceeded in this respect on an entirely different Principle from that of English Law, and to have made the Degree of Injury inflicted on Individuals the Standard by which the Proportion of Punishment is to be regulated; but the Degree of Injury inflicted in such Cases must necessarily vary greatly with the Habits and Feelings of the Community to which the Parties belong, and according as the Situation of the unfortunate Object of the Deception practised is viewed with greater or less Commiseration. No Comparison can be instituted in this respect between the Ideas and Feelings of a civilized and Christian Community on this Point and those of the Mass of the Inhabitants of this Country, and it is plain therefore that if this be conceded the Punishment allotted in these several Cases should have been differently proportioned.

Note 2., Page 90.

7. The Authors of the Penal Code appear to have been sensible of the Deficiencies of the Code in this respect, since in the Notes appended to the Code they submit it as a Question whether the existing Law should not be retained for the present as regards Europeans. This may readily be acknowledged; but such being the declared Opinion of

the Law Commissioners, it is not easy to account for the Circumstances of a direct Enactment not having been inserted in the Code to the same Effect.

8. The proposed Abolition of Corporal Punishment constitutes an important Consideration, as connected with the present Code. There can be no Question that many and weighty Objections exist to this Mode of Punishment, as stated by the Law Commissioners, and were the State of Society in this Country similar to that in England it might without Hesitation be discontinued. In the State of Ignorance and Semi-barbarism, however, in which the lower Classes in India have hitherto remained, it is not to be supposed that the milder Forms of Punishment, even those which are looked upon with extreme Dread by the corresponding Classes of a more civilized Society, will have an equal Effect upon the former; and it is of Members of these Classes that the great Mass of Offenders is composed. The Separation from former Friends and Associations, so repugnant to the Feelings of Europeans even in the humblest Ranks of Life, can have little comparative Effect upon Individuals either destitute of such Feelings, or who at best possess them but in a very slight Degree; and while Corporal Punishment has not yet been wholly dispensed with, even in a State of Society infinitely further advanced than that of this Country, the Necessity of discarding it altogether as an Instrument for the Prevention of Crime in India cannot be considered urgent, although every humane Person would gladly witness its Abolition whenever the moral Disposition of the Mass of the People shall have so far improved as to enable the Executive to present an effectual Check to Crime without its Employment, and when the Expediency of its Retention shall consequently be no longer apparent.

9. Another Circumstance which it appears necessary to remark as regards the Code in question is the imperfect Provision made for the Cognizance of a Class of Offences which hold a primary Place in this Country, and especially in a District under a temporary or Ryotwary Settlement; those coming under the Description specified in Regulation IX. of 1822 of the Madras Code. This Regulation was framed under the Direction of the Government of Sir Thomas Munro, whose Talent, and intimate Knowledge of the Circumstances of the Country, are unquestioned, and has been, I believe, every where considered as calculated effectually to answer the Purpose for which it was instituted. Clauses 138 and 139 of the Penal Code provide, it is true, but imperfectly so, for the first Description of Offences specified in Clause 2. Section 2. of the above Regulation, and those of the 3d and 5th, and partially those of the 4th Descriptions, are also punishable by the Code under the Head of "Criminal Breach of Trust" as defined in Clause 386. I am unable, however, to discover any Enactment in the Penal Code, in its present State, which would extend to Village Servants guilty of making false and fraudulent Entries in the public Accounts concerning the Extent, Value, and Classification of Land, as mentioned in the 4th Description of Offences in the Regulation above stated. Even supposing that Clause 386 might be so interpreted as to consider a Village Accountant possessed of a "Dominion" over the Lands the Accounts of which he has in his Keeping, to call those Lands the "Property" of Government would be to raise again the often discussed and still doubtful Question of the Right of the State in this respect, and it is not at all events to be supposed that the Law Commissioners intended to recognize them as such, while it is to be observed that it is only to what is strictly called "Property" that the Criminal Breach of "Trust" treated of in the Penal Code applies.

10. Clause 146 might probably be considered as extending to Offences of this Kind, if it were not restricted to Cases in which it is intended to "cause Injury to some Party;" and it is evident from the Context that in the Use of the Term "Party" in this Clause it is not proposed in any Case to include Government.

11. It would appear, consequently, that Offences of this Kind, as well as those of the 2d Description in Clause 2. of the Regulation referred to, are left unprovided for in the Code, unless they amount to the Crime of Cheating as defined in Clause 392, and are probably alluded to in Paragraph 5 of Note E. appended to the Code, in which it is stated by the Commissioners that the Code omits to provide any Punishment for some Kinds of Misconduct on the Part of public Servants. The Reason assigned for this Omission is the Existence of the Power of Dismissal in the Hands of Government, which is itself a Mode of Punishment available in Cases of this Kind, but I submit not a sufficient one with reference to a Class of Offences for the Commission of which so many Facilities exist in an unsettled District, and the Temptation to which is occasionally so great. With regard to these it may form a Subject for Consideration whether an Exception might not have been made to the Rule laid down by the Law Commissioners, that the Property of the State should in general be protected by the same Laws as are considered sufficient for the Protection of the Property of the Subject, similar to that which has been adopted by them in Cases of another Kind in Clause 217, which relate solely to Offences against the Interests of Government. The Chapter of Offences against the Revenue, in which Description it would appear that those I have alluded to might have been appropriately included, contains no Provision bearing any Allusion to the Subject.

12. The Chapter of Offences against Religion and Caste has a Tendency which may be considered objectionable in the present State of Society in this Country. While an Institution exists so detrimental to the Energies of a Country as that of Caste, and so opposed to the Ideas and Feelings of an enlightened and civilized Community, it should be the Object of Government rather to discourage the Enforcement of its Observances

Paragraph 3,
Note E.

than otherwise ; and accordingly I believe that it has usually been the Practice for the Servants of Government to take cognizance of Acts relative to these Institutions only with reference to the Degree in which they are calculated to lead to a Breach of the Peace, when it becomes necessary to notice them in a Magisterial Capacity. The Provisions of Chapter XV., however, are by no means confined to these Cases, and it is much to be feared that if carried into effect they may give rise continually to frivolous and vexatious Complaints, which it will be difficult to obviate in a Country so abounding with minute Distinctions of Sects and Observances as that of India, when the Magistrate shall be by Law prohibited from refusing to take cognizance of them. It may be hoped that with the Progress of Knowledge and Civilization among the Community these objectionable Institutions will eventually disappear ; but I submit that to make Acts done in contravention of the Rules of Caste Subjects for a Criminal Prosecution will be virtually to constitute the Officers of Government Supervisors of a System which they must generally condemn, and tend greatly to impede the desirable Object of their gradual Abolition.

13. With respect to the proposed Criterion by which Hurts are to be designated as "grievous" or otherwise, with reference to the Length of Time that the Party injured is rendered unable to follow his ordinary Pursuits, as laid down in Clause 315, it may be observed that such Method of Determination of the Degree of Hurt sustained would appear to be singularly inapplicable to a Country in which it is extremely common to disguise the real State of the Case in this respect, and in which various artificial Means are constantly made use of for the Purpose of inducing the Appearance of severe Injury having been inflicted, in order to support the exaggerated Statements of the complaining Parties ; while medical Assistance, which would invalidate such Evidence, is frequently not procurable.

14. The Law of Libel and Defamation constitutes an intricate Subject, which perhaps no one but a professional Person is properly qualified to discuss. I may remark, however, that Experience proves the contrary of the Position advanced by the Law Commissioners, that no respectable Person will venture to institute a Prosecution for Defamation in a Case in which he knows that the Truth of the defamatory Matter is likely to be proved, since it has been demonstrated in a celebrated Case of this Description recently tried before the English Law Courts, that Persons of high Rank and Station in Society will prefer encountering the Risk of the Allegations being proved to be true to a longer Continuance under the Imputations conveyed in them. With reference to the Course proposed by the Law Commissioners regarding Cases of this Nature, it might perhaps be found more advisable, in Practice, to admit Evidence of the Truth of Libel, with a view to its Justification or Modification, according to Circumstances, rather than to allow absolute Immunity to Defamation, with whatever Object it may be promulgated, provided the Allegations appear upon Examination to be correct in point of fact.

I have, &c.

(Signed) H. FRERE,
Acting Joint Magistrate in charge.

EDWARD BANNERMAN Esq. to the REGISTER to the PROVINCIAL COURT in the
Southern Division.

Sir,

Salem, 17th December 1838.

I HAVE the Honour to submit my Sentiments regarding the Penal Code prepared by the Indian Law Commissioners.

I beg, in the first place, to express my general Approbation and Admiration of the Work.

Its peculiar Excellence seems to consist in its being framed on such enlarged Principles that it will adapt to the most various Conditions of Society,—to the rudest and the most artificial,—to the most prostrate or the most elevated. The System of Commutation on which Fine and other Punishment (so far as is not left for the Code of Procedure) are placed seems to be what will ensure this very desirable Self-adjustibility of Punishment to the almost unlimited Variety of Cases and Circumstances which must occur within the immense Extent of Territories for which the Code is intended.

The next new Feature presented by the Code seems to be the general awarding of Part of the Penal Fine to the injured Party ; and this seems a great Improvement on the former Law, because the Practice is in itself very equitable,—because it averts future Prosecutions for Conspiracy, and also Civil Suits,—and because it will duly (and I think not more than duly) stimulate the apathetic Natives to prosecute for Crimes which they would otherwise suffer without seeking to bring the Offender to Justice.

The next new Feature seems to be the graduated System of fining for false Charges and Evidence, and for Acts tending to inculcate the innocent. Of this also I express my humble Approbation : and I also beg to offer for Consideration, whether in such Cases the falsely Accused should not be compensated for the Trouble, Loss, Anxiety, and Danger he may have undergone owing to the false Accusation.

In regard to Transportation, I would submit that in some Cases it should be declared whether the Transportation is to be with *rigorous* or *simple* Imprisonment. There is
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in Penal Colonies a continual Tendency to relax in this Particular, and therefore the Sentence in such Cases should be very express and stringent.

In regard to "rigorous Imprisonment," it may certainly in a great degree be made to supersede Corporal Punishment. Still I think this Punishment should be resorted to in some Cases of Theft; but the Punishment should not be public, and the Delinquent should not be allowed to appear in public while his Back exhibits the Marks of Laceration*, as this must extinguish every Motive for good Conduct in the Delinquent. On the other hand, some hardened Thieves cannot be made to feel except through their Skins; and in many Cases the mere Imprisonment punishes the Delinquent less than his Family deprived of his Labour.

* Perhaps also the Stripes might be inflicted on a less exposed Part of the Body.

Altogether, I would wish to see Corporal Punishment confined to Second Cases of Theft in the same Individuals. Before entering into the Body of the Work, I submit that the following Offence, which must be very common, does not seem to be provided for in the Code:—

A. advances to Cultivators for Cotton, Indigo, &c., they engaging to give him the Article at Eight Rupees per ; B., when it is ready to be delivered, obtains it by giving to the Cultivators Nine Rupees per

A. in the above Case might be absolutely ruined, and in many Cases could obtain no practical Redress by a Civil Action. I submit that B's Conduct should be made penal.

In Clause 76. I would, after the Word "Assault," in the Third Line, insert "or Demonstration of Assault," so as to include levelling a Gun, &c.

After Clause 108 the Words "provided that he knows or suspects the Offence he thus abets" might be inserted.

In Clause 113 it seems to me that the Words between the Word "whoever" and "attempts" might be omitted.

In 142 the Words "or Order" might be inserted after "Decision." I have known an Order arising out of a corrupt Manœuvre to be as culpable and pernicious as an actual Decision could be.

This Clause, as well as Clauses 143 and 144, seem very important, as they recognize the Principle of a Condemnation or Impeachment resting solely on a Judge's Proceedings; whereas such Impeachments have heretofore been condemned, expressly because they rest "on mere Inference." I venture to pronounce the above Clauses very judicious as well as important.

In regard to Clause 168, it is the only One I entirely object to, and I would at least insert the Words "by Acts or Threats" before the Word "obstructs." It may happen that the Sale may be very unjust, and the Odiousness of the Sale, or the Tax it arises from, will be brought to the Notice of Government by some Difficulty in the Sale; and the Government, with its excellent Intentions, will always be glad of such Index as a Backwardness of Purchasers may afford. This *merely passive* Obstruction to the Sale is, I submit, perfectly legitimate, as is such Conversation regarding the Merits of the Sale as may make the Community hold back as Purchasers; yet such Conversation would under this Clause be penal, as would be even a Person obstructing the Sale by informing his Friends that the Purchase was on any other accounts inadvisable. Perhaps there are not many Revenue Officers who would thus strain the Law to the Purposes of Revenue; but the Clause which defines a People's Rights of *passive* Resistance to an odious Tax is perhaps One of the most fundamental Importance in the Code, and One, therefore, which should be the most precisely worded. I would altogether earnestly recommend that the Words "by Acts or Threats" be inserted, as above suggested. The Words may hereafter be also of more constitutional Importance than at present, for it may be that some Freedom of *passive* Opposition may hereafter prove a Safeguard against aggressive Opposition.†

† It has been said that the Power of *passive* Resistance to Tithes has averted Rebellion in Ireland.

In regard to Clauses 171 and 173, I submit that the Punishment would in many Cases be inadequate, and that a Gradation of Punishment might be made. I would in short recommend that the Offender might be imprisoned for a Period equal to Half the Period the Party rescued might have to remain in Prison. I would at least remark, that the Punishment prescribed by this Clause would be a small Prevention to the Rescue of a State Prisoner, who would give a rich Bribe to make his Guards only *simulate* Resistance against a Rescue.

Throughout the whole of Chapter 10 I would wish to see the Word "Deposition" substituted for "Evidence," because, notwithstanding the Definition in Clause 188, an inattentive Person may exclude from his Ideas of Evidence a Prosecutor's or Plaintiff's Deposition.

In regard to Clause 208, it seems doubtful what constitutes an *Attempt* to smuggle. In some Countries a false Manifesto or Statement of Goods is considered such, and in some it is not. Perhaps the Words "by Word or Deed" might be inserted after "Attempts."

Clause 332 scarcely seems to provide an adequate Punishment for some Cases which might occur. The restraining a Post Office Runner, a Doctor, a Person, or Messenger of a Person, in need of a Doctor, might involve Results to obtain which the Delinquent would gladly undergo a small Punishment.

It seems objectionable that in Clause 333 the Punishment is *absolutely* limited to One Year, &c., whereas in 334 it is extended to Two Years, &c. I submit generally that a Law or the Limitation of the Law should not be *absolutely* expressed when a contradictory *Exception* is to follow, and that the Law should at least be accompanied with a marginal Reference to the Exceptions, as it may otherwise mislead any one unacquainted with the whole Code.

The last Remark applies to Clauses 369, 370, 371, 372, 400, 401, 402, 403, 404, 407, 408, 409, 410, 411, 412, 413, 414, 415, and 416.

In Clause 363 it might be advisable to insert the Words "Animal or" before the Word "Thing."

In regard to the Attempts referred to in the 346th and following Clauses, it might be advisable to class them under the Crimes they contemplate, where a Person might be more apt to look for them.

In Clause 390 I would insert the Words "or suspecting" after "knowing."

In regard to Clauses 460, 461, and 462, I think that the maximum of Punishment is too low, considering how difficult it may be to prove and recover from the Delinquent all the Property taken. A Party once dispossessed of his Property, on the Pretext of a legal Claim on it, is thus often in a more helpless and worse Condition than a Person who has suffered Gang Robbery. Furthermore, a Party who has committed Gang Robbery may escape the Penalties of that Offence by pretending some not quite impossible Claim on his Victim which will bring himself under the milder Sentence contemplated in these Clauses.

At present, even when a Debt is not pretended, a Party sometimes forcibly carries off valuable Property under the Cover of a direct Claim (as Inheritor or otherwise) thereto, and the Claim of the dispossessed Party is by false Evidence or otherwise so represented that all he gets from the Police is a Reference to the Civil Court, where he gets but little Redress, not having Evidence to each Article of Property taken by the Claimant who robbed him, or *her*, for it is generally on Females that this Description of Robbery is committed.

Such Cases form a great Portion of the Wrong which now goes unredressed, and I could have wished to see some more effectual Provision in the new Code for the Prevention of it.

The above Remarks may seem rather brief, but I hope their Brevity will be taken rather as a Sign of my Approbation than of my having but cursorily examined the Code. Had I yielded to my Inclination to commend all the Excellencies I met with, this Report would have been nearly Ten Times as long.

I have said that I humbly consider this Code adapted both to the most prostrate and the most elevated Conditions of Society; and to this I would add my Belief that it will be found *most* applicable to the latter, and that the Excellence of this noble Work will best be appreciated when the hitherto denied Boon of *primary Education* to the Masses, and *reformed Municipal Institutions*, have raised the now prostrate and abject Populace to the Condition of thinking Beings and Citizens. It is then they will best appreciate and obey (not only in Deed but in Spirit,—not only passively but actively,) this excellent Law, and give to it, instead of mere animal Obedience, their Honour, their Love, and their intelligent Co-operation.

I have, &c.
(Signed) E. BANNERMAN.

J. C. TAYLOR Esq. to the REGISTER to the PROVINCIAL COURT, Southern Division.

Sir,

Joint Magistrate's Office, Salem, 20th December 1838.

IN acknowledging the Receipt of your Communications dated respectively the 18th April and 20th June last, I beg to submit my Sentiments regarding the Penal Code framed by the Indian Law Commissioners. I deem it a most excellent Work, and as One well calculated in its Provisions to meet most, if not all, the Offences prevalent in India, and for many of which the existing Regulations do not sufficiently provide; and, as far as my limited Experience in Judicial Matters enables me to form an Opinion, the Penalties laid down in this Code are adequate and proper. I can see no Defects in the proposed Law, excepting the Omission in the Second Chapter, of Corporal Punishment, a Description of Penalty I always considered the best for the Suppression of petty Thefts; but I have no Doubt its Continuance may be rendered unnecessary when the Penalty proposed by the Law Commission for such Offences, of rigorous Imprisonment and Fine, shall have been brought into full Operation.

In conclusion, I beg to apologize for the Delay that has occurred in the Transmission of this Report, but it was unavoidable, and caused first by Mr. Ogilvie's Removal from the District, and then that of Mr. Elliot his immediate Successor.

I have, &c.
(Signed) J. C. TAYLOR,
Acting Joint Magistrate.

TRANSLATION of REDDI ROW'S MEMORANDUM upon PENAL CODE.

1. It is in those Dominions alone where the Offenders are subjected to severe Punishment that the People will prosper, and will be relieved from the Cruelties of the bad.

2. The Punishment now proposed in the Penal Code, by Fine and Incarceration, against those who, having properly behaved from their Infancy, may subsequently become guilty of any Crimes, with the Exception of Homicide, committed by the Impulse of the intermediate bad Habits, Aberration of good Understanding, momentary Anger, or other Motive, is, I think, amply sufficient.

3. But as regarding the Punishment provided against those who profess in committing Outrages, Frauds, Treachery, Theft, and Robbery, I am of opinion that it will in no way operate against them. It will, on the contrary, indulge them in promoting their bad Dealings, and will gradually augment the Commission of the Crimes, to the entire Detriment of the Individuals of mild and simple Nature. The only Remedy against them is, I believe, the Infliction of Corporal Punishment.

4. The Practice of Amputation and other severe Punishment, which prevailed in the Days of Native Rajahs, having descended from the ancient Law, is abrogated in the present Empire, and other Punishment, such as simple Imprisonment, Transportation, public Exposure, flogging with Rattan, and marking the Forehead with Godna, is substituted to all the Crimes with the Exception of Homicide, and subsequently the Use of Rattan is altered to that of Cat-o'-Nine-Tails.

5. Now, as it is proposed in the aforesaid Code that even the Use of Cat-o'-Nine-Tails is resolved to be prohibited, I am decidedly of opinion that it will, instead of diminishing the Crimes, augment the Perpetration of the same, and will take off even the Fear of Punishment, and so the Exercise of the Cruelties against the good will increase in the World.

(Signed) REDDI ROW,
Late Dewan in Travancore.

OBSERVATIONS of TAMBISAMY MOODELLY, the Seristadar of the Zillah Court of Combaconum, upon the new Penal Code.

I HUMBLY beg leave to observe, that the Penal Code is framed with excessive Moderation and Leniency, as admitted by the Legislators themselves, in the Words Note A., viz., "But we think it probable that many, even of those who condemn the English Statute Book as sanguinary, may think that our Code errs on the other Side (Leniency)," and they then proceed to show that it is necessary for the Security of Life to make Distinctions in the Punishment between actual Murder and other atrocious Crimes, such as Dacoity, Gang Robberies, &c., but which the whole of Europe punishes with Death.

2. In the first place, I beg leave to remark that Civilization and moral Superiority of Europe do not exist in the same Degree in India. 2dly, The Strictness of Police, and the consequent Detection of Crimes by the Vigilance of Police Officers, are Advantages which India does not enjoy in the same Degree as Europe. For the immense Tract of India is but ill provided for with the Officers of Police and perhaps it is impossible to provide with greater Efficiency, somehow resembling European Police, without great additional Expense to Government. Hence it naturally follows that One Tenth or scarcely One Twentieth Part only of the Crimes committed in these vast Territories is detected, and very few Delinquents are brought to Justice; others go with Impunity, pursuing their own Depredations at large. Even the few Individuals who have happened to fall in the Hands of Police, and for whose Conviction so much Pains are necessary to be taken, employ their Friends, Relations, and Money to defeat Conviction and the Ends of Justice.

3. Should, after all, the Law of India punish them with greater Moderation than the Law of Europe, where every Evildoer is almost sure to be apprehended, where is the Terror of Punishment which alone can suppress these Depredations? and where is the Security for the Lives and Property of the innocent and defenceless Inhabitants, who look to the Government as their Guardian, and are incapable of defending themselves, and really want moral Courage and Means of protecting themselves.

4. If the History of India is consulted, the Indian Government would appear to have always punished such Depredators with severe Flogging, Banishment, Mutilation, and Death, which admitted of various Kinds.

5. Whoever has heard of any One of Indian Governments, either Hindoo, Mahomedan, or Mahratta, feeding from 500 to 1,000 Prisoners daily in each District, and keeping a Gaol Establishment upon such extensive Scale? It is surely an European Invention. The Severity of Law can only be considered as the best Preventive of Crimes in India.

6. With regard to the Opinion of the Law Commissioners, that a Distinction of Punishment is necessary for the Security of Life, I have to remark that Gang Robbers, however daring, enter the Houses of their Victims with certain Fear of Resistance, Danger, and Detection. The mere Gain is their Object. They have no Enmity towards the Inmates of the House. If they can accomplish their Object, the Gain of Money and Jewels, &c. without Difficulty, they do not or will not stop there a Moment to commit

unnecessary Bloodshed. Such wanton Cruelty is foreign to the Nature of Natives. But the Moment any Resistance is offered, not only their Fear of Danger and Detection, but the Fear of Failure of their Object and Enterprize, prompt them to try the Superiority of their Force, with a view to escape, after accomplishing their Errand, with least possible Delay, when no Consideration in the World will deter them from committing personal Violence to any Length, even Murder, without the least Hesitation or Compunction of Heart. They originally came prepared for the worst. It is the Circumstance that renders their Guilt more or less considerable. Their very Undertaking, and going with armed Force and open Violence, implies Bloodshed, and Murder when necessary. The Will and Determination are not wanting, and the Remembrance of the Provisions of the Penal Code will never operate in their Mind for a Moment ; but the Exercise of atrocious Cruelties is prevented often by the Submission of the Householder, and Surrender of his Property.

7. Therefore the Consequence of these submissive Acts of the Victims cannot be pleaded with any Justice as Motive of Leniency towards the guilty, who were quite prepared to inflict Wounds, commit Murder, and other Atrocities when there may be the least Resistance or Hesitation on the Part of the Victims to deliver up their whole Property.

8. The only Punishment provided for in the Penal Code for such Gang Robberies, though attended with Bloodshed, but in which the Wounds inflicted perhaps happened to be, though severe, just not mortal, and from which the unhappy Victim had the good Fortune to be cured, is Transportation for Life.

9. On the Terror of which Punishment in the Minds of the Natives much Value is attached. This is in some degree true formerly ; but frequent Examples show that so many Convicts have returned with Impunity and without Detection,—so many are now at large in India,—that this Punishment had now ceased to be dreaded as before.

10. By the Provisions of the new Code greater Encouragement and Facility are afforded for returning from Transportation without Detection, because under the existing Regulations the Punishment for returning from Transportation is made Capital, and Detection and Proof of Identity more easy by the indelible Marks of Godna, which is an invariable Accompaniment to Transportation ; whereas by the new Code both of these seem to be abolished.

11. It is now simply provided that the Convicts who return from Transportation should be transported for Life, vide Articles 203 to 205 ; but with regard to the Convict who returns, and whose Sentence is already for Life, what is the Punishment ? The Code is silent. It must be presumed that he should be transported again.

12. The Terror with which "*Black Water*" was regarded formerly is daily wearing off the Minds of Natives, who are now generally acquainted with Voyage by Sea as well as by Land.

13. The natural March of Intellect, the Knowledge which, by Education and Example, the Government takes pains to inculcate into the Minds of Natives, and the Stories told by the returned Convicts from Transportation of their better Treatment in the Islands, have all begun to operate greatly upon the Minds of Natives. They hear that the Islands to which the Convicts are transported are as fertile as India ; that the Convicts are not worked there with the same Hardships as in Gaols ; that they are not fettered there ; that there are Opportunities of procuring Money for their own Use, and corresponding by Letters with their Relations by means of Merchant Vessels ; and that there is also a Possibility of returning One Day to their Relations without Detection.

14. These Reports, whether true or false, can never fail to lessen the Horror to which they were subject formerly ; and the "*Mystery*" which overhung the Fate of the transported Convicts is all vanished. They know now what it is ; they look upon it as a distant Pilgrimage, either to the Shores of Ganges or Juggernath, where there is also a Possibility of not returning at all. Any little "*Mystery*" that may yet remain in the Minds of Natives who reside in remote up Countries may very soon vanish in Process of Time.

15. The Separation from Society and Family is certainly a great Evil ; but it cannot be more dreadful than a voluntary Separation for a distant Pilgrimage, or Embarkation of Native Troops on Foreign warlike Expeditions, in both which Cases the Return of the Parties must be doubtful.

16. The Law Commissioners themselves admit that "the Efficacy of this Punishment is weakened" if transported Convicts should return frequently to the Society of their former Friends, &c. On this Hypothesis, therefore, I ask where is the Importance of the Punishment for so heinous a Crime as Gang Robbery attended with Bloodshed ? Can it be regarded as next to Death ?

17. It would be much better to make a Distinction between simple Death and something more dreadful than simple Privation of Life, for hanging in Chains after Death even can be regarded as more terrific as an Example, though unattended with Cruelty towards the guilty.

18. The Punishments are intended in general for Two Reasons, both as a Retribution to the Guilty, and as Example for deterring others, and thereby preventing Crimes ; but if Law were not as rigorous as possible it will lose its Effect as to the Prevention of Crimes.

19. There

19. There is another Reason why the Punishment of Death can be safely provided for atrocious Gang Robberies, because there is Power vested in the Government to mitigate the Punishment of Death, and commute it for any other in the Code. Besides this, a great discretionary Power ought to be and is naturally vested in the Judges, who will see at once whether a Gang Robber deserved Death or not, from the Circumstances of the Case, and atrocious Nature or otherwise of his Conduct; and no Judge, it must be allowed, would pass a Sentence of Death on a Convict if he did not really deserve it. Should, however, an erroneous Judgment be passed, there is competent Authority to mitigate the Punishment.

20. I therefore humbly conceive that there is no Reason whatever why the Law should not be as severe as possible towards a Set of lawless Banditti, though merely for the sake of striking Terror into their Heart; for the very Provision of Capital Punishment in the Penal Code, though its strict Execution may be very rare, would strike a great Terror in the Minds of Natives in general, and produce most salutary Effects of preventing Crimes in a great measure.

21. I humbly conceive that the Forfeiture of all the Property of each Individual of the Gang is another Measure which would strike the Evil at the Root. The Cupidity and Avarice of these Depredators would prompt them very soon to the Sense of Preservation of what they had got already, rather than to expose and hazard all that they possess by an Enterprize most dangerous and uncertain, arising upon mere Speculation of enriching themselves further by Plunder.

22. Such a Provision would be most beneficial, both as a Check against these Gang Robberies, and also as a Means of compensating the wretched Victims for their Sufferings and Loss of Property. The First Part of the Proceeds of such Forfeiture may be applied for the above Purpose, and out of the Remainder another Part may be employed for pensioning the Family of those Gangs, without leaving them to Starvation, and the Surplus, if any, can be carried to the Account of Government.

23. Should this not be thought advisable, the Sufferers by Gang Robbery must be invariably permitted to institute Civil Suits for the Recovery of the Property or the Value of the Property lost, against the Individuals of the Gang, or their Estate, Heirs, &c., &c.

24. With regard to the Flogging, which is abolished altogether, I humbly beg to remark that the Law Commissioners have shown only where it would be most sensibly felt, viz., by the higher Class of People, and then they adopted it generally without considering the lower Class; the Flogging is wanted for the lower Class, and not for the higher Class. If Flogging were not dealt with to a Cooly or common Labourer, to what other Punishment can he be sensible? Fine? No; for he has nothing to pay. Simple Imprisonment? He is very happy to eat his daily Batta, which must be given to him, and no Work. Rigorous Imprisonment? There is nothing terrific for him in it, for he is commonly used to work either at home, Field, or Gaol. At home, he must share his Food with his Family, but he would eat all himself in Gaol. Where is then the Punishment?

25. By Imprisonment the real Punishment is inflicted upon the innocent and unhappy Wife and Children of the Prisoner, if he had any. They are starved to Death by depriving them of the only Means of Support for procuring a Livelihood. The Law Commissioners are sensible of these, as may be seen by their Note A. on the Subject of Fine. There they have left undecided as to the Punishment to be substituted for Fine or Imprisonment; but when Flogging came on under consideration, they with an uncommon Leniency of Heart forbid it for every Class.

26. There was a Prisoner called Rauma Pillay in Gaol at Combaconum, who was repeatedly brought again there for petty Thefts, committed as soon as he was released from Gaol, at the Expiration of his former Sentence. He used to tell to his fellow Prisoners on the Eve of his Release, that they will soon see him again. Accordingly, when once he was released, the very same Day, he went to a Woman's House, in broad Day, and took a Brass Vessel, and, without wishing to take any Precaution of concealing it, began to run for the mere Purpose of attracting the Attention of the Bystanders, who overtook him easily, or he rather suffered himself to be taken. He confessed the Crime before the Police, before the Criminal Court, and, what is very extraordinary, before the Court of Circuit before whom he was committed as being an old Offender, though the Theft was of a small Value, and was sentenced to Five Years Imprisonment with Hard Labour in Irons, and Thirty-nine Stripes with Coral. When asked why he committed the Theft so soon after his Release, he answered candidly and freely that he had no Means of Livelihood, except in Gaol, and that his Desire was to return thither.

27. Now the only Part of the Punishment ordered by the Circuit Judge which was unacceptable to him is the Flogging, at which alone he cried for Mercy, pleaded that he was Fifty Years of Age, and cannot undergo so heavy a Punishment, but would die, &c., &c. There are several Persons yet, like Rauma Pillay, who prefer Gaol as an Asylum for Food and Cloth. To such People I beg to ask what is the Punishment provided for by the Penal Code?

28. They speak of the Gaol Discipline. What it is, and what it may be, I cannot imagine; but if there be no Flogging to enforce that Prison Discipline to come hereafter I cannot conceive how the best Rules could be brought into operation in Gaols.

29. I have shown that Imprisonment and Fine will not do for common Labourers, Coolies, Husbandmen, &c., who are the greatest Mass of the People in India who fill the Gaols. Then what is their Punishment?

30. If every Crime is to be visited by Imprisonment and Fine, as provided for by the Penal Code, the Gaols would be inundated with Prisoners of all kind, and the Government will have to pay a great Sum of Money for Batta, unless compensated by Fine, which the richer Class only would be able to pay. If the Flogging most necessary to the labouring Class to exact Work from them, and prevent them from falling into the idle Habits if they are not employed, were totally to be abolished, it would operate as a serious Injury to the Country at large; for if Government cannot by Law inflict Corporal Punishment for serious Crimes, such as Theft, Violence, Villany, &c., a fortiori, it would be illegal on a Master to exact Work from his Servant by Flogging, in a Landholder to exact his Work of Cultivation from his Labourers, &c.

31. The poor wretched Class of People now entirely dependent upon their natural Superiors and Protectors will in Process of Time learn how to resent Flogging as Injury, and will complain against their Superiors, and the Courts would be bound to punish their Masters by Imprisonment or Fine, under Clause 342, for Assault, hence the poor Class will be thrown out of Employ by their natural Superiors, and more submissive and industrious Men would be sought after. I beg to call to Notice the extensive Mischief this is likely to cause in lower Society in India. The Flogging, I beg to repeat, is most necessarily wanted in the Courts of Justice as a Punishment more sensibly felt by lower Class of People, and also for the Prevention of similar Offences by others of the same Class, as an Example.

32. The same Remarks apply to the Abolition of Exposure either of Ass, or Pillory, and Godna. They are absolutely wanted as Examples and as Degradation in Society for those who have committed most shamefully such Crimes as deserved them. The moral Effect at the Sight of such Exposure is very great and important, and very necessary.

33. If all the heinous Crimes and slight Offences were treated and punished in the same monotonous Way by Fine or Imprisonment, where is the Distinction between simple Offences committed at first by the Frailty of Human Nature, and wilful and deliberate Acts of Baseness and Villany. What Satisfaction is it for an honest Man who goes to Gaol for a few Days for Want of Money to pay a Fine which was imposed upon him for giving a Blow to his Servant or Equal, to see a Villain who goes likewise to Gaol with him to stay some longer Period for a most shameful Crime, for proper Conviction of which Proof may have been found inadequate?

34. In conclusion, I am humbly of opinion that the Penal Code is enacted by the Law Commissioners with greater Leniency than all the other Legislators of Europe and India have hitherto thought proper to do, and consequently the due Punishment and Exposure for several heinous Crimes, and the Flogging for other Offences, are the most serious Deficiencies throughout the whole Code, and ought to be most necessarily supplied with, for the due Administration of Justice, Security of the Life and Property, and the general Prosperity and Tranquillity of the Indian Empire of the British Government.

(Signed) TAMBISAMY MOODELLY,
Zillah Court Seristadar.

Enclosure 5 in No. 78.

J. HAIG Esq. to the REGISTER to the FOUJDARRY ADAWLUT COURT,
Fort Saint George.

Sir,

Chicacole, 31st July 1839.

1. I HAVE the Honour to inform you, in reply to your Letter of the 19th instant, that I have not yet had any Leisure to draw up a Report upon the proposed new Penal Code.

2. I concur in opinion with Mr. James Thomas, that our Madras Code, though anomalous, is superior to that of the Indian Law Commission; and if the Object of all Laws be the Attainment of a fixed and known Rule of Conduct, surely it must be very unwise to repeal those which are now known and generally approved of by the People in the Provinces under the Presidency, and substitute for them a new Code of Law, founded upon no existing tried System of Jurisprudence, but aspiring to combine in Theory the Perfection of all Laws.

3. The grand Principle of not assigning Penalties of the First Degree to Offences of an inferior Rank does not appear to have been attended to in the Construction of the new Code.

4. Capital Punishment is very sparingly inflicted under the present Madras Code, and the Punishment inflicted in Practice of every Crime under it is more certain than it would probably be under the new Code; but where Improvements are required they may be effected, and where Defects are discovered they may be removed; and Two of the greatest Improvements in Punishment would, I think, be to increase the Severity and reduce the Duration of Imprisonment, and attach the Penalty of Forfeiture of Property to certain Offences.

5. Whether

5. Whether Mr. Thomas's Opinion, that the new Code contains 'crude and puerile Matter, unskilful and dangerous Legislation, and peculiar and extraordinary Enactments, be well founded or not, I will not presume to determine ; but I have no Hesitation in declaring my gñeral Approval of that Gentleman's lucid and able Report upon the Code.

6. Seeing no Prospect of my having Leisure for several Months yet to prepare a Report, and being now daily engaged in Court, and suffering from Catarrh, I have ventured to offer these few brief Remarks upon the proposed new Code, which I hope may not be substituted for that which has worked so well hitherto in the Madras Presidency

I have, &c.*

(Signed) J. HAIG,

2d Judge of the Provincial Court, Northern Division.

JAMES THOMAS Esq. to the REGISTER to the COURT of CIRCUIT, Northern Division, Masulipatam.

Sir,

Rajahmundry, Zillah Criminal Judge's Court, 10th July 1838.

REFERRING to the Letter, under Date 14th April last, from the Register to the Court of Foujdarry Adawlut, requiring the Officers therein noted to submit any Remarks they may wish to offer upon any of the important Suggestions to which the proposed Penal Code relates, to point out Defects and suggest Improvements, which Letter was forwarded for my Information and Guidance on the 27th of the same Month, I proceed to submit, after a careful Perusal of the whole Code, together with the Explanatory Notes which accompany it, such Remarks as have occurred to me.

Paragraph 2. I trust I shall be strictly within the Province assigned to me if I freely remark upon the Provisions of the Code. My Apology is, that on an Occasion like the present, when so many important Questions are involved, and the future Well-being of Millions are at stake, not to express myself honestly and strongly would be failing in my Duty to the Government and to the People under its Administration.

Paragraph 3. The Code, in its present Form, as it appears to me, is calculated to perplex and mislead where it was intended to be most plain and perspicuous ; it is rather a Disquisition of Ethics than a Code of Laws propounded for the Guidance and Government of a People, and appears to have been prepared for Persons but very partially acquainted with the English Language. I cannot otherwise account for the Introduction of such Explanations as we find in Clause 6th. "The Word 'Man' denotes "a Male Human Being." Clause 15th : "Wrongful Gain, the Gain of Property to which "the Party gaining is not legally entitled." Clause 19th : "Property is not said to be "in possession of any Party other than a Person." See also Clauses 20th and 34th.

Paragraph 4. It appears to have been framed for Men who required to be guided by the most common Place and trifling Illustrations, and who for the First Time were to have legal Powers vested in them, and who had been educated in some Country where the Administration of Justice had been conducted on no settled or fixed Principles. I cannot otherwise account for such absurd and self-evident Cases as the following : Page 11, Clause 6th, Illustration A. "A. gives Z. Fifty Strokes with a Stick. Here A. may have "committed the Offence of voluntarily causing Hurt to Z. by the whole Beating, and "also by each of the Blows which make up the whole Beating. If A. were liable to "Punishment for every Blow, he might be imprisoned for Fifty Years, One for each "Blow ; but he is liable to only One Punishment for the whole Beating, &c." Again, Page 15, Clause 71st. "A., Parent, whips his Child moderately for the Child's Benefit. "A. has committed no Offence." Again, Clause 72. "6. Z. is carried off by a Tiger. A. "fires at the Tiger, knowing it to be likely that the Shot may kill Z., but not intending "to kill Z., and in good Faith intending Z.'s Benefit. The Tiger drops Z. It appears "that A.'s Ball has given Z. a mortal Wound. Nevertheless A. has committed no "Offence." As also the Illustrations which follow under this Clause, as well also Clause 73d, which enacts that "nothing is an Offence if the Harm committed be so "slight that no Person of ordinary Sense and Temper would complain of such Harm ;" and the Illustration which immediately follows, explaining, that "if a Person in getting "into a public Conveyance happens slightly to hurt another by pressing him against "the Side of the Carriage, he has not thereby committed a punishable Offence ;" and the Illustrations of Clause 69th, One of which only I quote, the last in order, but I entreat a Reference to the Remainder, all as equally absurd and trifling. "(A.) A Friend "of Z. calls at Z.'s House in Z.'s Absence, and writes and seals several Letters there with "Z.'s Papers and Wax without asking any Person's Permission. Here, if the Acquaint- "ance between A. and Z. be such that according to the Usage of Society the Consent "of Z. to such Use of Property must be implied, here A. has committed no Offence." Also in Clause 87 and its Illustrations, showing that a mad Man is guilty of no punishable Offence in attempting to kill another Person, the latter having a Right to defend himself : as well also the Illustration of Clause 83 ; again Illustration (t.) Page 95. "A. being on "friendly Terms with Z. goes into Z.'s Library in Z.'s Absence, and takes away a Book "without Z.'s express Consent. Here it is probable that A. may have conceived that he

See prefatory
Address.

" had Z.'s implied Consent to use Z.'s Books. If this was A.'s Impression, A. has not committed Theft." As well also the Illustration (p.), that A. committed no Theft in destroying a Book with the Contents of which he was exasperated, in the Presence of the Bookseller. But I forbear making any further Quotations; yet the Commissioners have described such Illustrations as " exhibiting the Law in full Action;" that the Code " will at once be a Statute Book, and a Collection of decided Cases," as being " Instances of the practical Application of the written Law to the Affairs of Mankind," and as " greatly facilitating the Understanding of the Law, and at the same Time serve as a Defence of the Law." Having thus cited Instances, and given my Opinion of the Structure of the Code, and stated my Objections to the Mode in which it has been drawn up, I proceed to point out some of its Defects in detail, observing, in passing, that if the Code ever should become Law all the Illustrations and much of what is contained in the First Four Chapters were better omitted.

Paragraph 5. I am aware that what I have now remarked upon is of very minor Importance in comparison of the many serious Errors which, as it appears to me, have been committed with respect to the Award of Punishment, and the Conclusion which is arrived at in a Number of Instances greatly affecting the Rights and Liberties of the People of this Country, whether European or Natives. On the First Perusal of the Code I was astonished at many of its Provisions, was at a loss to understand what Principles had guided the Commissioners in the Formation of the Code, and what eminent Jurists they had consulted, and was therefore naturally led to refer to their " Explanatory Notes;" but when I observed the false Reasoning, groundless Assumptions, and Absurdities with which this Defence abounds, I was prepared for all that I afterwards found in the Code itself, especially when I read the Extracts which follow Note in Page 54. " Two Things we take to be evident:— 1st. That some of these Omissions ought to be punished in exactly the same Manner in which Acts are punished. It appears to us that it may be fit to punish a Person as a Murderer for causing Death by omitting an Act which cannot be performed without personal Danger or pecuniary Loss; for instance, a Nurse hired to attend on a Person suffering from an infectious Disorder cannot perform her Duty without receiving some Risk of Infection, yet if she deserts the sick Person, and thus voluntarily causes his Death, we should be disposed to treat her as a Murderer." In this supposed Case the Nurse is put upon a Level with the Midnight Assassin who murders a Person for his Property, and the all-powerful Feeling or rather Instinct of Self-Preservation is not a sufficient Cause of Extenuation. Again, Page 55, " A., a Person, omits to tell Z. that a River is swollen so high that Z. cannot safely attempt to ford it, and by this Omission voluntarily causes Z.'s Death. This is Murder, if A. is a Person stationed by Authority to warn Travellers from attempting to ford the River." The Commissioners do not provide for any Circumstances of Mitigation on this Subject; and with reference to the whole of their Remarks in Note (M.) I would observe, that they would have done wisely to have adhered to the English Law, and to have been contented with the intelligible Definition therein laid down for Murder, instead of combating the Arguments of a Modern American Jurist.

See p. 53 to p. 60.
of the " Notes."

Paragraph 6. Also in Page 60 of the " Notes" the Commissioners observe, " the Law of France, the Law of England, and the Mahomedan Law" are indulgent to Homicide committed under the Circumstance of a Person being killed by the Husband on his discovering him in the Act of Adultery with his Wife." We must own that " we can see no Reason for making a Distinction between this Provocation and many other Provocations of the same Kind; that Circumstances might be easily conceived which would satisfy a Court that a Husband had in such a Case acted from no Feeling of wounded Honour or Affection, but from mere Brutality of Nature, or from disappointed Cupidity." I cannot follow what appears to me the false and spurious Reasoning in the whole of this Paragraph, or understand how the Commissioners come to the Conclusion that " they could see no Distinction between this Provocation and many other Provocations of the same Kind." This Instance which they have quoted, and which I conclude is the strongest they could imagine, the Law of every other Kingdom and People in the World considers as of much less Provocation than that offered in the Husband's Presence by the Adulterer. I go farther, and maintain that the Reasoning herein exhibited show the Framers of the Code to be completely ignorant of the First Feelings of our Nature. I would make One more Quotation. In Page 62 of the Notes they observe, " that a Man who deliberately kills another in order to prevent that other from pulling his Nose should be allowed to go absolutely unpunished would be most dangerous. The Law punishes and ought to punish such killing, but we cannot think that the Law ought to punish such killing as Murder." The Commissioners have not adverted to such Considerations as the following, which apply in the Case last quoted, such as One Man being more susceptible of Affront than another; more timid or more hasty. No Matter what his Disposition, if he thought another was going to pull his Nose, although possibly he had no reasonable or just Grounds for suspecting such an Intention, nevertheless he thinks so, or says he thought so, and deliberately kills another, yet it is not Murder, but " culpable Homicide in Defence." Here, if I understand the Commissioners aright, they make out that the Intention to pull a Man's Nose,—not, be it remarked, the Act itself, but the Intention only to commit such an Assault as pulling another's Nose, — is a sufficient Provocation to entitle him to the same indulgent Consideration in extenuation

extenuation of the Crime of Murder as the Provocation offered to a Husband by the Man found by him in the Act of Adultery with his Wife. Surely this is confounding all Distinction between Right and Wrong, and the relative Turpitude of Crime, or, to use their own Words, is "to confound all the Boundaries of Crime."

Paragraph 7. In Page 63 of the Notes will be found another Instance of the Rashness of the Commissioners, and of the Evil they are led into, by leaving the Principles of the Law of England, and framing Laws on their own Principles, when they treat the Crime of procuring of Abortion, and Death ensuing, as comparatively a trifling Offence, although it be One for which the Law of England awards Death. The Commissioners say, "a Person administering Abortives to a Woman who died in consequence, but "which was unforeseen by him," "is liable to no Punishment whatever on account of "her Death, but liable to the Punishment provided for causing Miscarriage." The Estimate of the Value of the Life of a Human Being is here very different from the Law of God, the Law of England, and even the Law of Nature.

Paragraph 8. In Page 84 of the Notes the Commissioners propose to punish as a Cheat every Man who obtains a Loan by making "a Promise of Repayment which he "does not mean to keep." I would only ask One Question. How is the Judge or Jury to ascertain that the Borrower never intended to keep his Promise? I forbear to make any further Extracts from the Notes; but after the Reasoning exhibited in its Defence I confess I proceed to the Examination of the Enactments of the Code itself expecting to find in them much that is in direct Variance with sound Principles, as well as false and dangerous Legislation.

Paragraph 9. I propose to offer a few brief Observations upon the Chapters in Order as they appear in the Code, and to point out the Crimes which appear to me to have been treated too leniently; also those Offences, on the other hand, to which too heavy Penalties have been attached. I shall then point out such as have been made penal which in my Opinion should not at all have come under the Cognizance of the Law, and Offences for which no Punishment whatsoever has been provided, merely premising that the Arrangement of the Chapters and Offences is exceedingly defective and artificial, and its Phraseology loose, and oftentimes unintelligible. As I proceed I shall point out wherein I consider the present Code of Madras Regulation infinitely superior to that which claims to take its Place.

Paragraph 10. I have already made such Remarks as appeared to me necessary in Chapter 1st, and in Chapter 2d. of "Punishments." I would offer a Remark that the Power vested in the Government of each Presidency is calculated to introduce a very great Evil; that of great Uncertainty and Unequality of Punishment. I consider Clause 43, which allows a Governor to banish for Life a Person considered by the Judicial Tribunal sufficiently punished by a Sentence of Seven Years Imprisonment, as exceedingly objectionable, and liable to great Abuse. The same Remarks apply to Clause 44.

Paragraph 11. The Code does not provide against the Imposition of excessive Fines in heinous Cases. It appears to me that the same Reasons which have induced the Commissioners to limit the Period of Imprisonment equally apply to limiting the Amount of Fine. I therefore consider Clause 50 objectionable, and would suggest that in all Cases a Maximum of Fine be fixed by the Legislature.

Paragraph 12. Chapter III. had in my Opinion better have been altogether omitted, as Persons likely to be called upon to administer the Laws could not require the Instructions therein contained. The same Remark applies to the Provisions in this Chapter, "of "the Right of private Defence." It does not require a Code of Laws, I apprehend, to explain when a Person may defend himself.

Paragraph 13. Chapter IV. in Clause 100. "Intoxication is admitted as a Plea in "mitigation of Punishment, the same as Madness or Idiocy." Surely this is at variance with all commonly received Ideas of Right and Wrong; and under this Provision a Person in a State of Intoxication might commit a Burglary, and not be punished.

Paragraph 14. Clause 105 makes it punishable Offence in "any one omitting to "give Information which by Law he was bound to do," and makes him liable to "an "unlimited Fine, and Imprisonment for Six Months." The above appears to me to be a novel Enactment, and does not provide for any mitigating Circumstances, such as the Fear of the Consequences which such a Disclosure would bring upon the Informer or his Family by the Party he informs against. I am of opinion the Clause is objectionable, even if this Chapter be considered a necessary Part of the Penal Code.

Paragraph 15. Chapter V. Clause 105 makes a Person liable to Fourteen Years Imprisonment, and to an unlimited Fine, and Forfeiture of Property, if after a Depredation committed by him in a neighbouring State he takes refuge in any Part of the Company's Territory where possibly his Family may be residing. For this I would suggest should be substituted, that the Person guilty of such Depredation be given up to the Power, in whose Territories he has trespassed, to be punished according to the Laws of that Power.

Paragraph 16. Chapter VIII. Clause 138. I would suggest that "Persons expecting "to be public Servants" should not be considered in the same Light as Persons already in the Service of the Government, as the Natives of this Country have such

general and vague Expectations of Employment that Half the Community may be considered as coming under this Clause; and I consider the Term used of "Gratification" not sufficiently precise, and prefer the Terms already in use in the Madras Code as more intelligible and defined. The remaining Clauses of this Chapter would be better omitted, and the Punishment of the public Officers, the Servants therein mentioned, left to the Government under which they are employed.

Paragraph 17. Chapter IX. By Clause 155 a Person "intentionally omitting to attend at a certain Time and Place, according to the Order of a public Servant, or departing again without Permission," is declared liable to One Month's Imprisonment and Fine of 500 Rupees. This surely is more than adequate to the Offence, and liable to the greatest Abuse in Practice; for instance, a Person quitting without Permission or not attending a Tasildar's Cutcherry or a Police Ameen's Cutcherry may be punished to this Extent. The same Objections apply to the Provisions of Clauses 156, 157, and 158. The remaining Clauses of this Chapter appear to be equally objectionable, and liable to great Abuse. The Punishment of Fine of 1,000 Rupees and Six Months Imprisonment of a Ryot making a false Return of the Number of his Cattle, or the exact Quantity of his Land appears unreasonable and excessive.

Paragraph 18. The Punishment awarded in Clause 163, of Six Months Imprisonment and 1,000 Rupees Fine, for false Information, "whereby Annoyance may follow to any Person," is exceedingly objectionable, more than adequate to the Offence, and liable to great Abuse. The same Remarks apply to the Provisions of the Clause which follows.

Paragraph 19. By Clause 171 a Person "resisting the unlawful Arrest of himself or others by a public Servant," perhaps corrupt, is made liable to Six Months Imprisonment and unlimited Fine. I need scarcely remark that under this Provision the grossest Acts of Oppression may and will be committed by the Native public Functionaries.

Paragraph 20. The Provisions of Clause 182, making a Person liable to Imprisonment of a Month or to a Fine of 200 Rupees for Disobedience of a local Order promulgated by a public Servant, although such Person by such Disobedience had no "Intention to produce Harm," or could have believed "it likely to produce Harm," appears to me to make Crime of that which is no Offence, while it leads to the greatest Oppression.

Paragraph 21. If it be intended by Chapter X. Clause 197 that any Person offering Interruption or Insult to a Moonsiff or Police Ameen is liable to Punishment of a Fine of 1,000 Rupees or Six Months Imprisonment, to be awarded by such Authorities, or even by any of the Judicial Tribunals, I consider the Punishment excessive.

Paragraph 22. Chapter XII. In Clauses 264 and 265 the maximum of Punishment provided for negligent Driving, and "for omitting to take Order with Property in his Possession," of a Fine of 2,000 Rupees and Imprisonment for the former, or 500 Rupees Fine and One Month's Imprisonment for the latter, appears to be too high, and liable to the greatest Abuse. The same may be said of Clause 272.

Paragraph 23. Chapter XV. Clause 282. The Punishment provided "for wounding the religious Feelings, by a Word, or Sound, or a Gesture," of One Year's Imprisonment and unlimited Fine, appears excessive, is liable to the greatest Abuse in practice, and is tantamount nearly, if not quite, to the Suppression of all free and legitimate Discussion. The "wounding the religious Feeling of another" is such a vague and uncertain Term that we should have One public Functionary declare that to be punishable under this Clause which another would characterise as a frivolous and vexatious Charge; and to punish Persons for uttering Sounds and making Gestures is peculiar to this Code, and worthy only of the Inquisition.

Paragraph 24. Chapter XVI. Clause 281 provides for the Punishment by Fine of 1,000 Rupees for a Person arriving in any Part of India failing to make known, whether through Ignorance or other Impediment it is not stated, "his Name and Object of Pursuit, &c." This appears preposterous in the present State of India, and the Laws which have lately passed the British Legislature.

Paragraph 25. Chapter XVIII. The Terms "voluntarily culpable Homicide" do not appear to me to be happily chosen, and the Distinctions entered into by the Commissioners between what they term "Manslaughter, Homicide in defence, voluntary culpable Homicide, Murder, and voluntary culpable Homicide by Consent," are not sufficiently obvious. They appear to me to be uncalled for, and calculated to mislead the Judicial Tribunals. In One Case I understand the Commissioners, that a Person legally bound to furnish Food to the Mother of a sucking Child, omitting to do so, "although he did not know that Child to be in existence," to be nevertheless guilty of voluntary culpable Homicide, or, in other Terms, as explained in Clause 295, of Murder. The Illustration (a) of Clause 299.—A Person "shooting another who attempts to horsewhip him, but not in a Manner to cause grievous Hurt, and believing in good Faith that he has no other Means of preventing the Assault, is not guilty of Murder, but liable to Imprisonment." I would only remark, the Law of England as well as the general Feelings of Mankind would assuredly treat the above Two Offences very differently from the Manner laid down in the Code before me.

Paragraph 26. Clauses 305, 308, 309 are worded in such a Manner as to render their Meaning not so clear and plain as all Penal Enactments should be, and, according to

Illustration

Illustration C, a Person shooting a Thief who is absconding with his Property has committed the Offence defined in Clause 309, and is liable to Three Years Imprisonment and Fine. Enactments of this Kind, I apprehend, are peculiar to this Code.

Paragraph 27. The Punishment in Clause 312 provided for procuring Abortion is inadequate to the Offence. It may extend to Three Years Imprisonment and Fine. The Madras Code authorizes Seven Years Imprisonment and 195 Stripes, and a Sentence, not extending to Capital Punishment, which is more in accordance with the English and Mahomedan Law and the general Feelings of Mankind.

Paragraph 28. The Clause 326, providing for a Fine as far as 2,000 Rupees and One Year's Imprisonment for inadvertently causing such Hurt to another as may prevent his pursuing his usual Vocation for Twenty Days, is excessive, and irrespective, as in many Instances in this Code, of the Intention of the Wrongdoer, and the real Guilt which attaches to him. The same Objection applies to Clauses 325, 327, as also to Clause 332, which provides for a Fine of 500 Rupees and a Month's Imprisonment of any one imposing on the Fears of another, and thereby inducing him not to go on his Journey or in the Path he was then pursuing. A Specimen, I must be allowed to say, of over Legislation of which there are many Instances in the Code under Consideration.

Paragraph 29. The Punishment of One Year's Imprisonment and a Fine of 1,000 Rupees for wrongfully confining another for the Period of One Day appears to me excessive. The same Observation applies to the Clause which follows. I will make One Remark here, generally applicable: That many Offences which in this Code are made highly penal had better have been left to the Punishment of the Magistrate, and treated as petty Offences, and thus many of the Clauses in this Chapter would have been unnecessary.

Paragraph 30. In Clause 346 a Person attempting to commit a Rape, by Assault for that Purpose, is declared liable only to Three Years or even Six Months Imprisonment. This appears to me to be quite inadequate to the Offence, and inconsistent with the other Parts of the Code which provides heavier Punishment for Offences of a much more venial Nature. Also the Punishment of Fourteen Years Imprisonment, provided in Clause 360, for the actual Commission of the Crime, is, in my Opinion, quite inadequate; nor can I imagine a Case in which "Two Years Imprisonment" could be adjudged, as contemplated by the Commissioners, for an Offence which by the Law of England and by the Mahomedan Law is punishable with Death, and which under the Madras Code has been punished by Transportation for Life.

Paragraph 31. Clause 351 provides that a Person assaulting One who has been guilty towards him of grave and sudden Provocation shall be liable to a Fine of 200 Rupees and a Month's Imprisonment, no Matter what be the Provocation given. The Punishment in Clause 352 for an Offence termed "Show of Assault" is, I imagine, peculiar to this Code.

Paragraph 32. Chapter XIX. Clause 398 makes an insolvent Trader liable to Punishment of Seven Years Imprisonment and Fine for removing or transferring Property at a Time "when he contemplated it as likely that he might become insolvent." The only Remark I would offer upon such an Enactment is the Difficulty, not to say Impossibility, of a Judicial Tribunal having Proof of what the accused Party "contemplated" "as likely."

Paragraph 33. Clause 402 provides a Punishment of Six Months Imprisonment and Fine for causing Mischief to the Extent of Five Rupees. This appears to me excessive, and I cannot imagine a Case requiring such a Punishment. Again, the Punishment provided for the Committal of or the Attempt to commit Mischief accompanied "by a Preparation to cause Death," of Three Years Imprisonment and Fine, is another Instance in which the Security of the Person is insufficiently provided for, and inconsistent with other Parts of the Code which visits with heavy Punishment comparatively trifling and venial Offences, such as those against the Revenue or Privileges of the Company's Government, &c. &c.

Paragraph 34. Of Clauses 422 and those which follow to 439 I would remark, I am not aware of the Advantage of the Terms here made use of over the commonly-received and well-understood Term of Burglary; and the several Distinctions entered into of the different Degrees of this Offence, and Intention on the Part of the Offenders, appear to me quite needless and highly artificial. I have already had Occasion to observe, that under the Provisions of this Code Life is comparatively insecure. The Punishment herein provided for Housebreaking by Night renders both Property and Persons insecure; and a grave and serious Offence, requiring exemplary Punishment, is made liable in Clause 435 to Imprisonment, which may extend to Three Years, and Fine. The circulative Punishment provided in the Three Clauses which follow is quite inadequate to a Crime which has always been looked upon by the Law of England as one of the most serious Offences. Of that Crime Lord Hale said, "I come to those Crimes that specially concern the Habitation of a Man, to which the Laws of this Kingdom have a special Respect, because every Man by the Law has a special Protection in reference to his House and Dwelling;" and in a Note to this Passage he said, that "this was the Notion among the Romans also appears from Cicero, who reckons *"irruptio in domo"* among the *"sceleria inexcusableia"*;" and Mr. Justice Blackstone observed, on the same Offence, "Burglary or nocturnal Housebreaking has always been looked upon as

* a very heinous Offence, not only because of the abundant Terrors that it naturally carries with it, but also as it is a forcible Invasion and Disturbance of that Right of Habitation which every Individual might acquire even in a State of Nature;" and again, "If any Person attempts to break open a House in the Night-time, and shall be killed in such an Attempt, the Slayer shall be acquitted and discharged."

Paragraph 35. Chapter XX. The Punishment provided in Clause 443 for a Person obtaining for another Employment in the Service of an Individual by means of a Document which he knows to be forged is Two Years Imprisonment and Fine, no matter how trifling the Service which has been obtained, or how slight the Fraud practised, such as using a forged Character or Credentials of Service. This Offence, then, is placed on a Par with the Offences of opening a sealed Letter in the Post Office Department." See Clause 453, "Assault with Intent to commit a Theft." Clause 345, "A false Declaration on Oath in a Court of Justice." Clause 195, "Rioting." Clause 130, "House Trespass and Preparation for Assault." Clause 430, "Criminal Trespass by breaking open a Lock." Clause 439. And in Clause 446 of this Chapter, "Committing a Forgery by which to harm the Reputation of another," is declared liable to Three Years Imprisonment and Fine. In this Instance Punishment is awarded without Reference to any Fraud committed, and is considered as grave an Offence as "destroying" or secreting a Document which purports to be a valuable Security." See Clause 452.

Paragraph 36. Chapter XXI. Clause 457 and its Illustration provides for the Punishment of a Person guilty of the Offence of annoying another by counterfeiting the Postmark of a particular Place "by Three Years Imprisonment and Fine. This Offence, then, the Commissioners must consider of equal Turpitude as receiving stolen Property knowing it to be stolen." (Clause 390) Theft, (365) Extortion, (Clause 369) an Assault with Intent to commit a Rape, (346) possessing and uttering base Coins, (243 and 250) and Larking House-trespass by Night (435), as they have provided the same Punishment, for these last-named comparatively heinous Offences.

Paragraph 37. Chapter XXIV. The Offence of "Bigamy," which the Commissioners stigmatise as being "one of the most criminal Frauds that can be conceived," is punished by Imprisonment which may extend to Fourteen Years, but may be visited with only Two Years Imprisonment. The Intention of the Law of England in this Subject appears to me to have been entirely misunderstood by the Commissioners, who observe, in Note 2, "that it appears to have been framed to prevent the Profanation of a religious Ceremony." No English Jurist is quoted in support of this Opinion, which partly accounts for the scarcely adequate Punishment now provided for an Offence which, as the Commissioners observe, "produces the most frightful Suffering to Individuals," and which, after a Lapse of a few Years, allows the same Offender to range at large again in that Society which he has so greatly offended. I may also observe, that this Enactment must be intended, I conclude, to apply only to Europeans, although the Code purports always to pay great Deference for the Habits and Feelings of the People of India.

Paragraph 38. Chapter XXV. It is not clear to me what Principles have guided the Commissioners in the framing of the Law upon "Defamation." They have acted in direct Opposition to the Theory of the Criminal Law of England, which makes the Essence of the Crime of private Libel to consist in its Tendency to provoke a Breach of the Peace. The Enactment of the Commissioners, "that any Word spoken or any Sign or visible Representation which may hurt the intellectual Reputation of another shall be considered punishable," opens a Door to the greatest Abuse, renders any Man every Hour liable to Prosecution, and makes it unsafe to express an Opinion of another, lest the wide and indefinite Law of Defamation include him as an Offender against the Peace and Well being of Society, it being according to the Law now proposed an Offence liable to Two Years Imprisonment and Fine "to say of a Soonee that he has turned a Sheeah, of a Hindoo that it is highly probable that he will be converted to Mahomedanism." Again, in Clause 470, it is enacted, that it is not Defamation to declare that "which is true of another." It is a Maxim in English Law, "the greater Truth the greater Libel;" and English Jurists give sound Reasons showing the Necessity for such an Axiom. The Code under Review, by discarding it, appears to me to perpetrate a great Evil on Society, and permits a malicious and revengeful Man to injure his Neighbour with Impunity; so that a Person's former Delinquencies may always and for ever afterwards become the Subject of the malicious Remarks of another to the Injury and Ruin of all his Prospects in Life, however changed in Character, and whatever Amount of Reparation may have been made. I cannot concur in the Justness of the Remarks made in the Note R. in defence of this Part of the Code. It appears to me that great practical Mischief will be produced by the Rule proposed, however plausible it may appear at first Sight, and that no sound Arguments have been produced by the Commissioners to show that the Criminal Law of England has not wisely considered and determined this Question.

Paragraph 39. Chapter XXVI. Clause 485 provides that Persons "making a Sound, a Gesture, or exhibiting an Object intending thereby to insult another" shall be punished to the Extent of Three Months Imprisonment and 1,000 Rupees Fine, also for the Offence defined in Clause 487, by which a Person "is annoyed by a Word, or Sound, or a Gesture, or by an Object exhibited," is provided a Punishment of One Month's

Imprisonment

See illustration (e),
p. 125.

Imprisonment and 100 Rupees Fine. Such Enactments are surely highly objectionable, and, as Parts of a Penal Code, novel and unprecedented; but the Commissioners seem to have thought the well-known and wise Maxim of English Law “*de minimis non curat Lex*” unworthy of Attention, or not applicable to Laws for India.

Paragraph 40. I have now gone through the whole of the Enactments as they stand in order in the Code, and would add a few general Remarks. Upon due Consideration of the Reasons urged by the Commissioners in defence of their Abolition of the Punishment of Stripes, I am of opinion that they have not made use of a sound Discretion in so doing. It is the most efficacious Punishment for the Class of Offenders generally convicted of Robbery and Theft; neither do I consider the Crime of Perjury, when it is clearly established, can be so effectually prevented “by Imprisonment and Fine” as by Exposure in the Mode termed “*Tusheer*” and with Stripes, as provided for in the Madras Code of Regulations.

Paragraph 41. It is also very questionable whether the Punishment, when awarded, of Transportation, should always be for Life, as laid down in the Code under Review. Such a Provision I apprehend will only lead to its being seldom awarded by the Tribunals, and many heinous Crimes will thus be inadequately punished. I would therefore suggest that Seven, Fourteen, and Twenty-one Years might be awarded in many Cases with better Effect.

Paragraph 42. I have now, as directed, pointed out what I consider Defects and suggested Improvements in the proposed Code: but I confess that I cannot bring my Mind to believe that the Code can ever become the Law of India. It exhibits so much false Reasoning, contains so much of crude and puerile Matter, so much of unskilful and questionable Legislation, so much that is repugnant to the general Feelings of Mankind, is so directly at variance with the well-understood and sound Principles of English Law, so impracticable and so uncertain, in my Opinion, would it prove in its Operation, that it would inflict greater Evils upon Society than it is intended to remedy. I have not made these Remarks without having quoted from the Code itself Matter which I conceive fully bears me out in the Opinion I have thus ventured to express. I cannot but remark, in conclusion, that I attribute this complete Failure upon the Part of these Indian Jurists entirely to the Circumstance of their having, as they admit in their prefatory Address, taken no existing System for their Model, and in their having trusted to their own Stores of legal Knowledge and Reading, instead of the Writing of the eminently sound and wise English Jurists whose Works and Opinions form the Bases of the Madras Code of Regulations, which in consequence is so infinitely superior to the proposed Code, and is so generally acceptable to the whole Native Population under this Presidency, that I believe its Abolition would be considered a great and serious Evil. Some Inadvertences may have crept into the Bombay Code, as pointed out by the Commissioners in their prefatory Address, but I see no serious and valid Objections taken to the Bengal and Madras Codes of Regulations, and which, I would observe, are not, as stated in the Preface to the Code, in fact Mahomedan Law, but is, indeed, as afterwards admitted, British Law, a Revision of which, and an Amalgamation of Bombay with these Codes, is all that in my Opinion is required for the due and efficient Administration of Criminal Law in India.

I have, &c.
(Signed) JAMES THOMAS,
Criminal Judge.

J. ROHDE Esq. to the REGISTER of the PROVINCIAL COURT, Northern Division,
Masulipatam.

Sir,

Auxiliary Court, Masulipatam, 30th July 1838.

I HAVE the Honour, in obedience to the Instructions of the Court of Foujdarry Adawlut of the 14th April 1838, communicated through the Provincial Court, to submit the Opinion called for on the proposed Penal Code.

As a whole I do not think the Code has been framed as best suited to meet the Wants of the Class of Persons among whom I have passed my Time; and I should conceive that its Adoption would introduce or rather increase in our Criminal Courts all that Chicanery which has at present, as far as my Experience goes, been confined on the large Scale to our Civil Courts. The Chapters on Defamation, Section 486, and many other Clauses, might be quoted, and in addition to those I may quote Clauses 285, 286, 264, 487, 488, and the Code at large, as descending too much into Minutiae and Distinctions of Offences which may be classed generally as petty Offences, and particularized under this One Head. The Specification of some of which as Offences, and so severely punishable, I have no Hesitation in saying would induce many false and frivolous Complaints, which latter, though in the main true, require but a very little of that Colouring in which all Native Complaints are dressed up to come within the Cognizance of the Courts, and secure the Prosecutor from the Consequences of making a malicious Charge.

The Denunciations on Offenders in Matters relating to Religion and Caste appear unnecessarily severe; the more so, see Clause 275, &c., as they do not admit of the Judge using any great discretionary Power on the Side of Leniency. The Offences also specified

in this and other Chapters seem to pay no Regard to the Propriety of the Ceremony and its Fitness in the Place. The Prosecution by Criminal Process of Judges for Acts of Judgment also seems highly objectionable. It is impossible to say that a Judge knew a Thing to be the Case where no Credit can be attached to Evidence. The Punishment of Judges should, in my Opinion, rest solely with the Government; and it cannot be said that Dismissal is an insufficient Punishment, for that laid down is no sufficient Punishment in itself for the Offence, and already the Judge is punishable for receiving any Consideration to influence his Judgment. The Punishment in the Code is therefore little more than nominal, while the Introductions of the giving false Judgment as an Offence, and rendering the Officer liable to Prosecution, seems objectionable.

I do not, however, consider myself competent to give an Opinion on each Part of the Code. I have stated what I consider its chief Objections.

I have, &c. &c.
(Signed) J. ROHDE,
Acting Joint Criminal Judge.

Enclosure 6 in No. 78.

REMARKS by G. J. CASAMAJOR Esq. on the Penal Code prepared by the
Indian Law Commissioners.

CHAPTER 2.

Clause 57. I do not see on what Principle the Liability is here limited to Six Years nor is it explained in the Notes. In the parallel Case of Civil Debtors there is no such Limitation. Quere, might not that Parallel be still further applied to Fines? And when the Imprisonment substituted for the Fine has been undergone, might not the Party fined be allowed, like an insolvent Debtor, as a Condition of his Liberation, to enter into Proof that he had bonâ fide given up all his Property? In case he did satisfactorily prove this he might be liberated; in case he did not, he should be still detained, nor could this well be complained of as a Hardship, because the Detention would be voluntary.

It strikes me that the Doctrine of Fines in Note A. is embarrassed by the Subject being treated too comprehensively, and by the Omission of some important Distinctions and Principles. *Fine* should be distinguished from *Restitution*. The corrupt Judge and the Perjurer in Paragraph 6, and every other illegal Gainer, should be made to disgorge the whole of their illegal Gains, so far as they were within their Power, as *Restitution*, and be fined besides. For the Restitution, Imprisonment should not be allowed as a Substitute. The Culprit should not be set free till he had accounted satisfactorily for the whole of his illegal Gains, and shown what Portions of them were really and truly within his Power, and what Portions irrecoverable, and bonâ fide beyond his Control or the Possibility of Recovery. For the Fine, Imprisonment *should* be allowed as a Substitute, because the Fine is simply penal, and so is the Imprisonment in lieu of it. There would not be much Danger in allowing the Substitution, if a proper Process were employed in recovering Fines, and the Imprisonment was properly proportioned to the Fine. Why should not the Process for recovering a Fine be the same as that for executing a Decree in a Civil Case, aided by an Enactment rendering null all Transfers of his Property by a Person accused till after Sentence passed, and Execution thereof, or empowering to attach his Property to a given Extent, or all his Property? An Inquiry also might be made as to the Circumstances of every accused Person, immediately that he was ordered to be apprehended or summoned.

As to the Proportion of Imprisonment to Fine, both should be fixed more with reference to the Offender than to the Offence, and they should generally be in the inverse Proportion to one another. In proportion as a Man is rich any given Fine is a slight Punishment, because he can easily pay it; but any given Period of Imprisonment is a severe Punishment, because it deprives him of all his habitual Enjoyments, which are many. In proportion as a Man is poor, any given Fine is a severe Punishment, because of the Sacrifice which attends the Payment of it; any given Period of Imprisonment is a slight Punishment, because the habitual Enjoyments of which it deprives him are few. I can call to Mind but One Case in which this does not hold,—that of a Miser.

CHAPTER 3.

62. There should, I think, be a Proviso added to the End of this Clause as follows:
“ Provided that when an Offence is committed through Error, that Error does not
“ consist in believing that the Law commands something to be done which in truth it
“ does not command to be done, but consists in believing in good Faith the Thing or
“ Person which is the Object of the Act to be a different Thing or Person from what
“ it really is.” Every Man is responsible for knowing what the Law really is before he presumes to act in execution of it; but no Man can guard against occasional Mistakes about Things and Persons. In the Case of Illustration (b), if A. arrested Y. or Z. by Order not of the Court but of an European Gentleman of the Station not having Authority to order him to do so, believing in good Faith that the said Gentleman had such Authority, A. should be punished, because he was responsible for knowing that the Court alone had Authority to give him the Order

Right

Right of Private Defence.

74. I would add a Third Sub-clause: "Also to secure and deliver to the nearest Officer of Justice any Person whom he sees in actual Commission of anything which is an Offence under this Code." Some such Provision seems to me required to make the Right of private Defence useful to the Community, and this appears as natural a Place as any to introduce it.

75. (Third) I would alter the wording thus:—"The Right of private Defence in no Case extends to inflicting such Harm as the Inflictor at the Time of inflicting it must have known to be more than was necessary for the Purpose of Defence and of securing the Offender."

The Restriction in its present State I think will do the greatest Harm. It is well and truly said in Note B.* that the People of this Country "are too little disposed to help themselves;" and that we should rather "rouse and encourage a manly Spirit" among them than multiply Restrictions on the Exercise of the "Right of Self-defence." But the Third Restriction in Clause 75 would, I am persuaded, not only multiply Restrictions on but practically annihilate the Exercise of that Right in the Northern and Centre Divisions of this Presidency, which constitute its larger Half. Under this Restriction a Question might be raised in every Case of Resistance to an Attack of Gang Robbers and Housebreakers, which Resistance was attended by the Death or serious personal Injury of any of the Assailants, whether or no less Harm would not have been sufficient for Defence; and One or Two unadvised Decisions (Decisions founded very likely upon the purest and best Motives in the Judge; and considering how bred and qualified,—I ought to say, perhaps, unqualified,—are many of those who in this Country perform the Functions of Judges, who does not see the extreme Probability of such Decisions).—One or Two unadvised Decisions punishing a Man for having exceeded his Right of Self-defence, or even sending him up to the Criminal Court charged with having done so, though he was afterwards acquitted, would imprint such Terror in the Minds of the People that they would be more unresisting than ever. I hold this Point of encouraging Resistance to lawless Attacks to be of immense Importance; One of the main Hinges on which the internal Well-being of British India turns; the One only Thing to which I look for re-establishing Security of Person and Property, which is far from being now enjoyed in many of our Provinces. The Effect of British Dominion upon the Social State of India has been like the Effect of a Chemical Alternative. It has decomposed the whole Mass, and occasioned it to assume new Forms. The Decomposition is complete, but the new Forms are not yet fixed nor perfected. All the ancient Holds of Native Society are loosed; its Mounds broke down; its Ties disrupted and severed, and it is now in a Transition State. The Succeedaneums are yet unformed; are at least unconfirmed, and unrooted in Affection or Prescription. In such a State all the bad Elements of Society spring into Action and Influence, because lightened from the Restraints of the old Regime, and not yet brought into continuous or efficient Contact with those of the new. Then there is the unfortunate Effect of the Declaration at the Time of the permanent Settlement, that the British Government took upon itself the Maintenance of the Police and the internal Protection of the Country, which the People generally understand to mean that when they have once paid their Revenue they have nothing more to do but to sit down quiet (which is their dear Delight), and God and the Company will do everything else that is necessary for their Protection and Comfort. To this is superadded the Fear of being liable to Punishment if they wound or kill a Gang Robber or Housebreaker in Self-defence. I laboured no Point so much while I was Magistrate of Cuddapa as to assure them that this Fear was unfounded, and to convince them that no Government could effectually protect those who would do nothing to protect themselves. The Effects were in the course of a few Months Six Instances of brave and successful Resistance to formidable Gangs of Robbers. The Particulars of these are mentioned in my Police Report as Magistrate of Cuddapa for 1836. The oldest Native Servants in the Cutcherry could remember only One or Two previous ones since the Company's Government began. Robbery by open Violence and Housebreaking are the Two staple Crimes of this Presidency, and no One who has not been personally and much conversant with the People can conceive the Extent to which the Suffering or Fear of these embitters their Lives. To think to keep them down by an increased Establishment of Police Peons is mere Folly; an Instance may occur here and there in which such Means appear to produce such an Effect; but to rely on such Means is Madness. The People must be excited and encouraged to help themselves and one another. This, and the Reanimation of the Village Institutions, are the only solid Grounds of Hope.

77 and 80. Under these Clauses you might lawfully cut off a Man's Arm or Leg and Thigh with a Broad Sword, if that was the only Way by which you could prevent his shoving you, or running off with your Slipper which he had thieved. These Clauses seem much too comprehensive. The general Principle seems to be that the Hurt which may lawfully be caused in resisting an Offence, or apprehending the Person who attempts to commit it, ought never to exceed the Punishment of the Offence if committed.

81. (First Sub-clause) "Till the Offender has effected his Retreat" seems too vague. What's the Criterion of an Offender having effected his Retreat? I would omit the

Words from "either" to "or" inclusive, and add to the End "the Offender delivered to an Officer of Justice."

I would add to the End of the Second and Third Sub-clauses the Words "and till the Offender is delivered to an Officer of Justice."

The Business is not done till this has been done; and the best Persons in the World to do it are those who see the Offence committed, and are interested in the Subject of it. Homicide, even by a private Person in attempting to take a Man charged with Felony who resists, is by the Law of England justifiable, and not punished; and Felony includes all the graver Offences.

Bl. Com. B. 4.
Ch. 14.

CHAPTER 4.

Abetment.

This whole Chapter appears to me deficient in Clearness, and contains some considerable Departures from established Principles, yet there is no explanatory Note. Example: When the Offence, previously abetted by Instigation, Conspiracy, or Aid, is in consequence actually committed, the Abettors are made punishable the same as the actual Committer. So far, so good. This is the old Law of England, and is restored by the 7 & 8 Geo. 4. Cap. 29. It is also the Principle of the French Code (Clause 59); and seems founded in Truth and Nature. But if the Offenders do not actually commit, not see that any Principle is laid down or followed respecting the Punishment. Clauses 90 and 91 respect each a particular Case only; and it is not perfectly clear that in these Cases the Thing abetted is supposed not to have been actually done. By the Illustration to Clause 90 it would seem that the actual Commission of the Perjury is contemplated as an Alternative; but in this Case that Clause is inconsistent with Clause 88. Clause 88 providing the full Punishment of Perjury for the Abettor; Clause 90 only One Quarter of the longest Term of Imprisonment for Perjury for the same Offence aggravated by the actual Delivery of a Bribe. It can scarcely be intended that the Loss of the Amount of the Bribe should be a Substitute for Three Quarters of the Imprisonment, as the Amount of the Bribe can bear no assignable Proportion to the Imprisonment or any Part of it.

93. The Act here contemplated is punished by not more than One Quarter of the longest Period of Imprisonment for the Offence if actually committed. But the Law of England makes the Doer a Principal in the Second Degree, and punishable the same as the actual Committer. This Provision of the old Law of England is restored by the Act of the 7 & 8 Geo. 4. Cap. 29., respecting most Felonies, and it is extended also to Misdemeanor. I see no Reason for the Leniency.

Clause 101. This Clause should, I think, be transferred to Chapter 8. Public Servants will naturally be most familiar with that Chapter, which ought, therefore, for practical Convenience and Use, to contain all that affects them as such.

Exception.

107. This is a great Departure from the Principles of English Law, by which even a Husband, a Son, or Brother may not harbour a Felon. None but the Felon's Wife may; and even she not on the Ground of near and dear Connexion, but because she is supposed to have no Will independent of her Husband. This Exception appears to be taken from the French Code; but there it is not near so broadly laid down; the contrary indeed is the Rule, and the Cases in which the Harbour is allowed are all special Exceptions.

I see not any sufficient Grounds for this Principle. I can find no Trace of it in the Institutes of Menu; and Chapter 7, Article 335, according to Sir W. Jones's Translation, seems in direct Opposition to it.

These Observations equally apply to the Exception in Clause 124, Chapter 6, and 177, Chapter 9.

CHAPTER 8.

I should prefer the following as the Title of this Chapter: "Of Offence by public Servants as such." Several of the Acts made punishable in it cannot, without straining the Term, be called Abuse of Authority. See Clause 147, 149, &c. Clause 150 should come under Cheating by Personation; not in this Chapter. The Offence is not more likely to be committed by a public Servant than by any other, but much less likely.

There is much in this Chapter which depends on the Code of Procedure; viz, how and before what Tribunal the Offences punishable by Clauses 141, 142, and 143 are to be prosecuted, and who is to exercise the Powers conferred by Clause 149, and what previous Checks should be established in all those Proceedings. 142 and 143 are not likely to be often acted upon under this Government. Section XII. Regulation XII. of 1802, and Section XIII. Regulation VIII. of 1816, of the Madras Regulations, which contain Provisions concerning similar Offences by Judges, Registers, Sudder Ameeris, and District Moonsiffs, have, I believe, very seldom been so.

If Section 149 is (as appears) to include the covenanted Civil Servants of the Company, it would frequently cause a terrible Explosion when it was acted upon, and have a very

very injurious Effect. Such a Power did exist under the Madras Regulation of 1802, but it was abolished in 1828. I am disposed to think that the whole Clause would be best omitted, and the Matter left to the Discretion of Government and the Heads of Departments, who can always fine their own Servants without any Law for the Purpose.

CHAPTER 9.

Contempts of Authority.

156. I would suggest the Addition of the following Words after "same :"—"by the "Period fixed for such Production or Delivery, without reasonable Excuse, to the "Satisfaction of such public Servant or Body of public Servants." As the Clause at present stands, immense Delay and Obstruction of Business might be caused with Impunity by a Holder of a Document unwilling to produce it.

CHAPTER 10.

Offences against Public Justice.

195. There appears to me a little Obscurity here. What is there to distinguish the "Declaration made and subscribed" from giving false Evidence as defined in 188 ; and yet the former is punishable by only Two Years Imprisonment, the latter by Seven. It should be explained what Sort of Declaration is meant, as a solemn Declaration is in common Use in this Country as a Sanction tantamount to an Oath.

197. I would leave out the Words "or causes any Interruption." Such a Power as they convey would often be a Sword in a Child's Hand in this Country. Let us remember who and what the Judges, as defined in this Code, often are and must be in this Country. Very young Englishmen, full of the Conceit of their own supposed Importance and Dignity, and their vast Superiority to the Natives (a Sentiment, however unhappy and unfounded, very, very common). Suppose a rustic ignorant Native, smarting under a real Grievance, enters a Court with a Petition, and calls out for Justice, as they often do, when the Assistant Judge, Register, or Acting Judge, or perhaps Judge, is just considering some knotty Point, or a contradictory Set of Depositions about the same Thing, and naturally very unwilling to be disturbed. Who does not picture to himself the following Scene as natural ? "What's that Man making a Noise about ? Tell him to "be quiet." "He's brought a Petition." "This is not the Time to present it ; he must "wait. I'm busy." "He says his House will be sold if the Petition be not taken, and "an Order passed." "Tell him to go and present it at the regular Time." The Petitioner becomes a little noisy, because the Matter is one of pressing Importance to him. "Confound the Fellow. Commit him under Clause 197 ;" and the Petitioner goes to Gaol. This is no Caricature.

CHAPTER 11.

Offences relating to the Revenue.

There is a great deal in this Chapter which appears to me to require Explanation and Correction. The first thing that strikes me is, that the Penalties are a good deal severer than those of the Madras Regulations. The highest Penalty for Smuggling in these is Confiscation of the Thing smuggled, or treble Duty. For other Frauds on the Customs there is Fine (unlimited) ; and in case the Fine is not paid, Imprisonment, with or without Hard Labour, according to the Rank of the Culprit. Imprisonment is in no Case adjudicable as an original Penalty for Smuggling or any other Fraud on the Customs by the Madras Regulations, nor is it by the 3 & 4 W. 4. Cap. 53., which, with a few subsequent Modifications, contains (I believe) the present Law of England respecting Smuggling. Confiscation or Fine is the Punishment in every Case ; and no Mention at all is made of Imprisonment, except in One or Two Cases attended with Violence. But in this Chapter we have the Offence of Smuggling punishable in every Case with Imprisonment, which may extend to Three Months, or Fine,—which may extend to an Amount equal to Five Times the Market Value of the Thing smuggled, added to 500 Rupees, or both,—and this too besides Confiscation. (See Clause 229.) I doubt the Propriety of Imprisonment as an original Punishment for Smuggling in any but a few very aggravated Cases. The Remarks upon this Subject in Chapter 33 of Beccaria (who evidently does not underrate the Criminality of Smuggling) appear to me very much to the Purpose. There is One strong Argument against making Imprisonment the stated Punishment for Smuggling ; viz., that the Offence is very frequently committed in this Country by Traders, upon whom Imprisonment inflicts a much more serious Evil than is contemplated by the Law, in the Derangement of their Concerns consequent upon their personal Management being withdrawn, and Loss of Credit.

213. For the Words "in order to" I would substitute "which is used solely for." How is it to be known "in order to" what Purpose a Man makes or has in his Possession any Implement, &c. that may be used, as most may, for Twenty different Purposes ? Scissors, Waxcloth, and Sealing Wax are generally used in order to pack up smuggled Cloth and other Goods ; but how can it be known, in any particular Case, whether they are made and kept for that Purpose ? Great Vexation and Injustice might be the Consequence of such a Law.

215. I would insert after the Word "Possession" the Words "without satisfactory Cause shown." Persons may easily be in possession of prohibited Things without knowing it, or for a good Motive, and may not be able immediately to make them over to the proper Authority.

216. After the Words "omits to put such Mark on such Article" I would insert the Words "for Twenty-four Hours, or before the Article quits his Possession, if that be sooner than Twenty-four Hours after it came into his Possession." There must be some reasonable Time allowed for obeying the Law. Suppose a Merchant to receive a Cargo of Goods in Two or Three hundred Bags, on each of which Bags he was bound by Law to put a Mark, and the Goods to arrive by successive Boats or Bandy Loads through a whole Day, the Work of putting the required Mark on the whole Number landed in the Day would not probably require an Hour, if done all at once at the End of the Day, but might detain the Marker from any other Work the whole Day, if done as each Load arrived; but if left to be done at once at the End of the Day, as Common Sense and Convenience would dictate, supposing a Custom House Officer to look in about Two in the Afternoon, and find 200 Bags unmarked, why the Penalty of this Clause might be exacted.

218 and 219. The Remark on 213 applies to these. I would omit from both the Words "intending or knowing it to be likely that the same may be used," and substitute in both the Words "which can be used solely."

221. The Remark on 215 applies here. I would add after the Word "Possession" the Words "without satisfactory Cause shown."

CHAPTER 12.

Coin.

The Arrangement and Wording of several of the Clauses in this Chapter seem to me unnatural, and liable to mislead. In 232 and 233 we have first a Punishment for counterfeiting Coin generally, of from Six Months to Three Years Imprisonment, then for counterfeiting the King's or Company's Coin of from Two to Seven Years; but counterfeiting Coin in general includes counterfeiting the King's and Company's Coin. I venture to think that the following would have been a far clearer and more natural Arrangement:

"Whoever counterfeits the King's or Company's Coin shall be punished, &c. Whoever counterfeits Coin, other than the King's or Company's Coin, shall be punished, &c."

In the same Manner, and for the same Reasons, I would amalgamate 234 and 235 thus:

"Whoever makes any Die for the Purpose of counterfeiting or enabling any other Person to counterfeit the King's or Company's Coin, shall be punished, &c. Whoever makes any Die, &c., any Coin which is not the King's or Company's Coin, shall be punished, &c."

In like Manner 238 and 239, 240 and 241, 243 and 244, 246 and 247, and 251 and 252.

In 236 and 248, for the Reasons given in my Remarks on 213 (in Chapter 11), I would leave out the Words "with the Intention of employing the same," and "intending to employ the same," and substitute the Words "which is used solely." I see no Reason why the same Distinctions of Punishment between Offences against the King's and Company's Coin and Offences against any other Coin, which is observed in most of the Provisions of this Chapter, should not be observed in this Clause and Clause 248. Many of the Implements used solely for coining are equally applicable to making every Sort of Coin, but many, such as the Stamp or Die, are not; and in respect of these last the same superior Protection might be afforded to the King's and Company's Coin as in other respects.

I would alter 243 and 244 thus, "Whoever, without satisfactory Cause shown, continues for more than Five Days in possession of counterfeit Coin, and does not deliver it up to some public Officer, if the said Coin be a Counterfeit of the King's or Company's Coin, shall be punished with Imprisonment of either Description, which may extend to Three Years and must not be less than Six Months, and shall also be liable to Fine; if the said Coin be a Counterfeit of any other Coin than the King's or Company's Coin, shall be punished with Imprisonment of either Description, which may extend to One Year, and must not be less than Two Months, and shall also be liable to Fine." There ought to be a Provision in the proper Part of the Law requiring all public Officers to receive, and send to some proper Superior, and give a Receipt for all counterfeit Coin tendered to them. I prefer the above Provision to those in 243 and 244, because it is so much more definite, and at least as effectual; I should say more so. The Object is to extirpate counterfeit Coin from Circulation, and the most effectual Method of doing this is to make it penal for any Person to have such Coin in his Possession for more than such Time as may suffice to deliver it up.

(Signed) G. J. CASAMAJOR.

MEMORANDUM OF M. LEWIN, Esq., the Acting Second Judge.

1. The Observations which I shall have the Honour to submit on the Penal Code will for the most part embrace those Subjects on which a Residence of some Years in India in the public Service has given me the Means of particular Observation.

2. The Code takes the most enlightened modern Codes as a Guide, and aims to fill up their Defects; it sends forth the greatest Intelligence of modern Times in India, and exhibits an extended Acquaintance with the Country, the People, and the Circumstances for which the Law is required, regarding those general Considerations on which the Propriety and Justification of all Laws must mainly depend.

3. The Nature of the Rule and Government, the Religion and religious Prejudices, the Customs of the Country, its Superstition and Ignorance, relative Condition and Rank in Society, have all been consulted; the Interests of Individuals, unrecognized as Rights in other Codes, are acknowledged; a Spirit of Impartiality marks its Punishments; the Means of making Punishment reach the guilty are made manifest.

4. In its Penalties the Relation between the Crime and the Punishment is considered, and the Fitness of the Punishment in itself, looking to its Effect on Society as well as on the Criminal; the Motive which urged the Offence is met in the Punishment; is also apportioned; relative Guilt arising out of a Connexion with the Offence being distinguished from the Offence itself.

5. Its Views of Humanity are superior. There are but Two Offences punishable with Death; one of them Murder, the other an Offence inevitably leading to Murder, while numerous other Crimes, Capital under the Law of England, have milder Punishments awarded, according to a more enlightened Experience of the Guilt, and the Tendency of Severity to lead to fresh and higher Crime.

6. This Limitation in the Punishment of Death is in unison with the Feelings of the People, and with the Criminal Law best known in the East; it is also in concurrence with the Laws enacted by the local Government.

7. By the Mahomedan Law, Capital Punishment is confined to Murder, Treason, and Rebellion, and to such Offences as, with great Semblance of Reason, have elsewhere been deemed to involve as much Guilt as Murder, and to call for the same Penalties; but there is no sporting with Life by a long Train of Capital Crimes. No Code is more careful of Life than the Mahomedan, nor is there any whose Provisions are more founded on Reason, though that Reason, according to more recent Judgment, has been pronounced to be sometimes bad, nor has any Law been found more efficient in the Repression of Crime. Whether its Punishments, which have been denounced as sanguinary, were better adapted to the Country and its People, or that the Means of carrying the Law into effect were better planned, certain it is, a Result followed them which has not been attained in Times more recent.

8. By the Regulations enacted by the local Government there are but Two Capital Offences; one of them Murder, the other repeated Robbery under Circumstances of great Violence; 2d Clause, 4th Section, 15th Regulation 1803; the last an Award at the Discretion of the Foujdarry Adawlut, a Tribunal before whom the Offence was not tried.

9. One of the Objects of the Code is to bring every Offence within a legal Definition, and to establish a System whose Provisions shall reach the Understanding, and by a Course of familiar Example to remove the Uncertainty which hangs over the Practice of the Law.

10. The Tendency of this Endeavour is to curtail the Discretion of the Judge, and to confine the Power of Adjudication to the Bench which tried the Offence. If this should be the Consequence, One of the worst Parts of our System will be got rid of, as well as much Uncertainty of Punishment, the Influence of which is felt in the State of Crime in the Country, and is perhaps the only Evil which is chargeable on the Law itself.

11. In entering on a Discussion of the Penal Code, the Inquiry which first suggests itself is the Necessity of a new Law, and whence did it arise? Is it that the State of Crime in the Country, owing to the intrinsic Badness of the present Law, demands a new one, or that the present Law, not having had fair Play, a Remedy is sought after in a new Theory? After much Deliberation, I have come to the latter Opinion.

12. It is of much less Consequence to the People of India to be assured of a new Law than of the Means of carrying the Law into effect, be it what it may, for bad Laws soon correct themselves. The most enlightened Code in the World would confer little if any Advantage beyond the present Law, unless it should have the Advantage of more efficient Means.

13. As a Theory, the Superiority of the Code will not, I think, be disputed; for it seems to embrace all that is of worth in the present Law, with the Result of more recent Intelligence added to it; but we know little of either, except as Theories. It is not in the Power of any one to say that the present Law would not have answered its Purpose had it been well applied; and it is an important Question, whatever Accordance there may and must be in the Principle of any Two Penal Codes, whether among an ignorant People, accustomed to the present Law, it were not better to graft on the old Stock; whether the Labour expended in the Creation of a new Law had not been more profitably devoted to the Repair of the old.

14. It has been the Fault of our Government in India that it has trusted more to Theories and Systems than to the Means. Change has succeeded Change without Improvement. Crime and Impunity prevail as much if not more than ever. Fresh Influences, it is true, have come into operation; crude Notions of Liberty have sprung up in the Country; our Forms have annihilated the Strength of the Law, and removed many of the Restraints which before existed. Modelled in a Land of Liberty, they have been applied to a People imbued with all the Views of Despotism; they have taught how to evade a just Obligation, and how the Law might be employed as an Instrument to oppress; they have encouraged Crime by laying open the Means of Impunity.

15. The Substitution of Revenue Heads of Police for Darogahs and the Transfer of the Office of Magistrate from the Judge to the Collector was a Gain in Theory. The Separation of the Judge who tried the Offence from the Power that committed it was more in accordance with Justice toward the Accused; but it was a poor Result which threw the Labour on a Functionary whose Hands were already full; it gave Justice to the Accused, but none to the Public, and this is the Complaint which is made against all our Arrangements.

16. Under the former System Punishment was more certain; the Offence passed direct to the Judge. The Intrigue which now intervenes between the Arrest and Commitment did not then take place. Celerity of Proceeding was a Bar to the Perjury which now stands between Trial and Conviction. Despite of Errors in Theory, it is quite certain that the Arm of Justice was more efficient.

17. With an Agency unequal to the Wants of the Country, our Judicial Arrangements have all tended to throw Obstacles in the Way of Business; Forms have multiplied as Business has increased; the Means which the Country afforded have been neglected; the Wheels of Justice are clogged in its Departments. There is not an Officer in any District who has not a Weight of Duty cast upon him which it is physically impossible for him to bear.

18. When the Justice of the Country has been called forth, its Operation has been more terrible to the Aggrieved than to the Aggressor. The Criminal never got more than his Due, while the injured Party always got less. Practically, there was neither Vengeance nor Compensation in the Law.

19. The Code proposes to unite these Principles, though the Merit of the Invention does not belong to its Framers; it is to be found in some of the Regulations of the Local Government, and also in the Mahomedan Law; the Principle obtained in the Country before it came under British Rule, and its Disregard has been a fruitful Source of Complaint against our Judicial Arrangements.

20. In a Country, such as India, where the great Majority of the People are poor, and unable to sustain the ordinary Expense incident to the Maintenance of their Rights, where cheap Justice is the only Justice, the Principle should be carried to the utmost Limit; it should be prompt and complete Justice at the least possible Cost to the injured Party.

21. The Difficulty of getting at the Law has prevented injured Parties appealing to it. People have shunned the Courts, because they could not endure the tardy and expensive Process which leads to them. The Means which the Magistrate had in his Hands of acquainting himself with the State of Crime in the Country under his Superintendence, and with the Causes producing it, have been arrested by the Introduction of Forms and Processes incompatible with the Object. In this Way he has lost his Hold on Crime; he sees little first hand; his Superintendence is the reading of a Record; personal Inquiry is out of the Question; every Case must be examined by him with a detailed Record, in order that the Means of Appeal may exist.

22. Our Forms contemplate Ten Magistrates where they find but One. It is not the Law that demands Alteration; it is Means; these should provide a speedy and convenient Justice, administered after a Manner suitable to the Morals and Condition of the People. If our Arrangements are of the procrastinating Nature of the present ones, we theorize and legislate in vain. Intimately connected with the Administration of the Criminal Law is the Mode of Proceeding in our Civil Courts.

23. Out of the Delays of Justice, and the Want of Justice, as distinguished from positive Injustice, proceed a large Portion of the Crime of the Country; the Remainder may be divided between Poverty, Ignorance, and the reprobate Character of a public Service practically without Control; these together, acting upon a People of light moral Principle, have produced a Degree of Profligacy and Demoralization in the Country which was utterly unknown before our Rule existed.

24. Among the Objections which have been made to the Penal Code, the one which has obtained most Credit is its Universality. This Objection was calculated to tell upon certain of our Fellow Countrymen at the Presidencies and among the People of England, who are accustomed to magnify in Indian Affairs in proportion to their Ignorance of them; but it was not one which could have any Weight with those who had any Experience of the Country and of its People.

25. Not to say that the Principles of Justice must everywhere be the same, the Incongruities which the Code has to encounter are as numerous in a single Presidency as in the Three united. Mahomedan, Hindoo, and Christian, wherever they exist, are subject to One universal Law, though that Law is interpreted in every Village according to the Degree

Degree of Ignorance or Knowledge which prevails; but each in their Intercourse with the Judicial Tribunals of the Country fall under the Operation of one general Principle.

26. Objections of this Nature might with greater Force be urged against the ancient Laws of the Country. There are Customs among the Hindoos which no Laws recognize; there are others opposed by their Law, and these are more jealously upheld than many which have the Law for their Support.

27. It might with just Grounds be questioned of the Code whether it does not go too far in its Support to the Vices of the Country, and whether it does not uphold them to the Prejudice of the People, regardless that Society is in a State of Progression; whether it does not retard rather than promote the Course of Civilization; but it never can, I think, be a Question with any one who peruses those Parts of the Code which relate to the Religion, Caste, the Character, and Habits of the People, whether it is not positively in greater Accordance with the existing Errors than the present Law.

28. Clause 141 of Chapter 8, on the Abuse of the Power of public Servants, admits the Receipt of Presents, according to the Custom of the Country. The Man who gives a Bribe to the public Service, according to the Custom of the Country, is exempted from Punishment (Notes, Pages 36 and 37), being liable only in the Case contemplated in Clause 88.

29. The Degree of Corruption which is here imputed to the public Service does not, I believe, exist; but, encouraged by Impunity, it doubtless soon will exist. The Law is one which places the Centre of Justice in the rich Man's Purse.

30. The Custom of making Presents to Men in Judicial Authority has existed in all Countries in proportion as Times were barbarous and the People in subjection. The Object has been always the same, viz., to conciliate the Judge, and push on the Cause. A Tray of Fruit given to the Judge is not a Bribe in the ordinary Acceptation, because there is no implied Engagement for the Quid pro quo, as in the Case of a pecuniary Gratification, but the Influence expected is the same. The Object is to procure a Benefit at the Expense of an Adversary; but for the Suit there would be no Fruit.

31. Lord William Bentinck forbade the Receipt of every Description of Present; and the Prohibition was hailed as a Benefit by the public Service. It was, however, but little enforced at the Time, and has since been forgotten. There are few Europeans, however, who would not gladly be relieved from the Obligation of submitting to Courtesies of so doubtful a Character.

32. A Present of any Kind from a Man great in Rank and Station to a Person great only in his Office is capable of creating an Impression unfavourable to Justice in the Mind of the Judges, and to the Character of Justice in the Mind of the Bystander. The Suit might be between a Zemeendar and One of his Ryots; the Custom of the Country would permit a Present from the Zemeendar, while the inferior Station of the Ryot would not allow of his approaching the Judge with a Nuzzer.

33. We are not informed whether the Benefit accruing from the Payment of the Money corruptly received is to become the Subject of Punishment to the Giver; but I presume the Negative, since the Motive which urged its Payment would also induce its Concealment. The Giver is in the Position of being obliged to receive the Profits of Corruption. Would it not be more consistent with Morality and more rational to arrest the Practice by a better Constitution of the public Service, and by a more efficient Surveillance over it, and to declare that a Man must forego an Advantage which he cannot arrive at except through the Means of Corruption.

34. Clause 283 tends to confirm the ignorant in Principles of Belief which operate to their Prejudice. The Power to injure is believed to exist, because its pretended Application is met by heavy Punishments. People will not believe that the Government have denounced under heavy Penalties the Exercise of a Power which is only imaginary. In England Sorcery was punished, as it was in France, as long as the Government believed in its Existence.

35. In those Districts where the pretended Power of imprecating the Vengeance of the Deity has been punished by the Magistrate, the Practice and Belief have extended; where Pains have been taken to expose the Cheat, and where the public Authorities have openly discountenanced the Belief, it has declined.

36. Sitting in Dhurama (283) might be treated as a Petty Assault, and is not incompatible with the Definition (Clause 339) "if he cause Cessation of Motion," or it might be met by Clause 330 as an Attempt at wrongful Restraint. These Acts are capable of producing a temporary Annoyance, by a Play on the Ignorance occasionally found in Indian Society, and might be met by the prompt Authority which the Magistrate has over petty Offences. The appropriate Mode of treating them would be the Ducking-stool; the Offender should be held up as a Rogue and Cheat, the Act being regarded *ad absurdum*, instead of meeting with Consideration.

37. A Threat founded on the same Species of Imposition (283 b.) ought to be viewed with reference to its Object, as Criminal Intimidation (Clauses 186, 483), as an Attempt at Extortion (Clause 370), or as an Abetment (Clause 88), and punished according to the injurious Tendency of the Act instigated; but the Punishment should not be made to depend on the Name of the Deity being invoked, nor should any absurd Alarm or Belief be held to excuse an Act in itself wrong.

38. This Clause (282) is objectionable for the Spirit of Litigation it infuses into Society, and for the Delusion it carries with it. Its Tendency is to make that important which but for Penalties would be ridiculous. The same Observation applies to Clauses 485 and 487, excepting that in the latter Clause, the Punishment being less, the Objection is also less.

39. All these Acts, as they tend to a Breach of public Tranquillity, might be made subject to the Rules which provide for the Repression of that Offence. They furnish Evidence of Intention, but ought not, I think, to constitute a distinct Offence. Clause 136 sufficiently provides for them.

40. In the Case of a public Insult offered to a Magistrate (485 b.) arising out of Business before him, the Power of punishing for Contempt ought to furnish a Remedy. An Affront, such as hooting at his Person, would be unworthy of Regard, and Severity is not necessary to gain for the Office Respect. If the Magistrate be a Tyrant it is well that through any Medium he be exposed; if he is not so, the Shaft is innocent. Offences of this Nature are not common, and pass away with the Occasion which gives rise to them. Respect to Authority is an Axiom and Vice of the Country, the Impression of former Rule.

41. An habitual Leaning towards Authority, together with a Character superior to those around him, are usually sufficient outward Protection for a Magistrate; and no Advantage would be gained to the Character of the Office nor to the People by the Fence of legal Enactments. Clamour is a natural Species of Defence, and sometimes the only available One, and though destitute of proper Foundation it ought not to be punished, unless proved to be the Result of malicious Machinations and Falsehood, and intended for some ulterior and sinister Purpose.

42. In India, where the Means of Redress from Oppression have always been of the scantiest Description, Clamour and popular Assemblages have been the customary Expedient. History shows they have seldom been carried beyond a bona fide Purpose. They are far less guilty in their Purpose than many of the public Meetings which are tolerated by the Law of England.

43. The Leaning of the Code is towards Despotism; it is not then surprising that it should give Encouragement to Customs based upon Ignorance, still less that it should abound in Offences against public Authority.

44. The Objections to these Clauses, 43 and 44, are very obvious, and the Reasons found for them in Pages 4 and 5 of the Notes by no means reconcile the Mind to them. They are capable of working Hardship, apart from positive Punishment, without producing any Benefit to the State. As a Means to bolster up the English Character they must be quite futile. The Charm which once floated round the Englishman has long since been disputed. The People of India well know that there are good and bad of all Nations, and that the Vices of a single Individual cannot carry Deformity to a whole Race. Neither does the Instability of our Empire sanction a Provision so much at variance with received Notions of Liberty.

45. The Object in view would be better secured by sending out of India Men of Rank and Station, whose Conduct, though it should not bring the Agents under the Lash of the Law, is capable, as proceeding from Parties in immediate Connexion with the Government, of furnishing an Example more injurious to the Character of the Government than the worst Acts of Offence which occasionally expose some insignificant Offender to legal Penalties.

46. Clause 113 is, in my Judgment, wholly indefensible. The Objections to it are so obvious and so numerous that it seems quite unnecessary to particularize them.

47. That some Standard was called for will be acknowledged by every one who is acquainted with the Difference of the Law under the Three Presidencies, of which the Preface to the Code, Page 5, affords Example. It is enough that the most important Principles are variously regarded by different Authorities of the same Government, that a Difference of Punishment is dispensed to the same Offence, to make it indispensable that an Assimilation should take place in support of impartial Justice.

48. Something also was necessary to remove the Anomaly of a Christian Government, in Abandonment of its own Functions of Government, depending on a Code based on a Religion opposed to its own. Repeated Innovation, it is true, has much abridged the Practice of the Mahomedan Law; but its Theory, grafted on our own Regulations, remains the same in some of its worst Parts. The Adulteress is punished (See Reg. I. A.D. 1818) according to the conjugal Views of Mahomed; while the Adulterer, covering himself under various Forms of Marriage, is permitted to "rove free and unquestioned in the Paths of Love."

49. It is also of some Importance that the Judge who tries and punishes should have the Law before him, instead of being obliged to follow the Interpretation of another. The Mahomedan Code supplies the Law where none other can be found to fit the Case, and in the most ordinary Offences, such as Theft, Burglary, Cutting and Maiming, Embezzlement, certain Cases of Highway Robbery, &c., is appealed to.

50. It may be objected to the Code that it refines and defines too much; that in its Attempt to classify and distinguish Offences it multiplies their Number, presenting too many Shades of the same Offence; it also, I think, creates needless Offences (340, 341, 352). The English Law of Assault seems better adapted for a Country where petty Disputes

are frequent, the most trifling Altercation being generally accompanied by a Show of Force.

51. In the Chapter of Self-defence, Clause 76, the Right is made to depend on an Offence untried,—on a finite Punishment, awardable under a certain Statute, to Circumstances not yet proved. The same Principle is carried on in other Clauses.

52. There is an apparent Safety to the accused and injured Party in having a given Point to prove; but in Matters of personal Aggression legal Deductions are not often considered. Few in India, wrongfully deprived of their Liberty, would feel any Apprehension which could be called reasonable. It would generally be Submission to a supposed inevitable Necessity, or "War to the Knife" (though this very rarely). Whatever the End in view, whether the Captivity contemplated were of a Character to involve the highest Degree of Criminality, or such as would but justify the Fine of a Dirm, a Law of this Nature seems to imply an Education and Knowledge in the People which few possess.

53. Where the Aggressor is generally the stronger Party, and where the Offence of wrongful Restraint is frequent, and resorted to for the worst Purposes, it would be more consistent with rational Liberty to leave the Justification in the Hands of the Jury or Judge, who are able to judge of the Man and the Facts, than to throw the Onus of particular Proof on the injured Party.

54. Similar Objection may be made to Clause 75, in the Case of the Wrong done by the public Servant, who has always an Advantage on his Side; he has always a Number of his own Body ready to stand forward in his Support, which is not the Case with his Adversary, whose Friends are in general afraid to stir in his Behalf. The People of India are already too prone to submit to Oppression under the Cover of Authority. Habitual Oppression and habitual Submission are, in fact, almost synonymous Terms.

55. The most invigorating Principle that could be communicated to the People of India would be that of standing up for their Rights against all Aggressions. The just Demands of Liberty seem to require that a Man should be allowed to guard his Person, at whatever Cost, the Onus being upon him of proving that he did not use more Force than the Occasion required.

56. A Concession might be made to the Grade of a public Officer, and a Distinction might be drawn between an Officer acting on his own Authority and when armed with the Warrant of a Superior. In the latter Case, Resistance should be deemed an Offence. A Constable in England has the Power of Arrest; but he is a different Order of Being from those who perform the Duties of the Office in India. They are low and ignorant, and frequently mere Instruments in the Hands of the inferior Police standing immediately above them. The Code assumes a Corruption on the Part of the public Service which seems incompatible with the Power and Support which it here derives from the Law.

57. The People of India are so unable to comprehend the Right of Defence that even where Parties have been killed in resisting the Attacks of Gang Robbers the Prosecutor has at Trial denied the Resistance, declaring that the Robbers (some of whom were killed) had fought among themselves, though the Bodies of the latter were found at the Door of the House attacked. See C. O. F. U., Pages 135 and 136.

58. Every sober-minded Person would desire to see the Law become the sole Medium of Appeal, but the Time is far distant when those who most require its Aid will be able to avail themselves of it. The 2d and 3d Paragraphs of Clause 75 appear to me to provide the most appropriate Rules; they are clear and intelligible, and the Justice which characterizes the 3d Paragraph is such as is implanted in the Mind of every one.

59. Between Clauses 88, 97, and 101 there is a Distinction drawn which in my Judgment is ill founded. 88 and 97 Clauses relate to a positive and active Participation; Clause 101 to negative Participation. In practice there is no real Difference. The Maxim "qui non prohibet quando prohibere protest jubet" ought to be the Rule; and whether it be positive Instigation, positive Assistance, or negative Aid by Concealment of the Intention to commit the Crime, the Offence and Punishment should be the same.

60. There is oftentimes little Reason to distinguish an Offence committed by a public Officer from the same Act committed by another Person. The large Majority of Police to whom Clause 101 would be applicable are so little separated by their Office from the Community that their Influence as public Servants is scarcely known, except in so far as their particular Duties make it available for the Commission of Crime.

61. It is usually through the Police that the Plan of a Robbery takes place; it is through them that the Deposit of Property becomes known; they are in most Instances not only cognizant of the Robbery about to take place, but seldom without the Power to prevent it.

62. That a Man on ordinary Occasions who engages to commit a Crime and abandons his Purpose before its Completion is less guilty than him who goes the whole Journey, will be readily admitted; but the Principle does not hold good with the public Servant, because the Crime continues until he has acquitted himself of the Duty of his Office, which lay in preventing it.

63. The Punishment in this Clause (106) is far too light for an Offence of great Frequency, one also with which a great Proportion of the highest Crime is chargeable.

64. I submit the foregoing Remarks with great Diffidence, sensible how little worthy I am to be the Critic of a Work possessing the high and unquestionable Merit of the Penal Code.

(Signed) M. LEWIN.

CRIMINAL JUDGES to the REGISTER to the PROVINCIAL COURT of CIRCUIT for the Centre Division, Chittoor.

21st November 1838.

IN return to the annexed Precept, which accompanied an Extract from the Proceedings of the Provincial Court of Circuit for the Centre Division under Date the 18th April last, forwarding Copy of a Circular Letter from the Court of Foujdarry Adawlut, calling upon the Criminal Judge to submit any Remark he may wish to offer upon any of the important Subjects to which the Penal Code relates, and to point out such Defects and to suggest such Improvements as may occur to him, the Criminal Judge begs respectfully to state, that he has perused with much Attention and great Satisfaction the new Penal Code. The most objectionable Part of it appears to the Criminal Judge to be the Penal Provisions contained in Chapter XV. "Offences relating to Religion and Caste," and the most required appear to be Chapter VIII. Public Servants; X. Public Justice; XX. Documents; and XXV. Defamation.

The Criminal Judge will not venture any further Remarks on a Code apparently so admirably adapted for the Purpose it is intended.

Given under my Hand and the Seal of the Court this 21st Day of November 1838.

(L.S.)

(Signed) F. LASCELLES, Criminal Judge.

IN return to the Exigency of the Precept of the Provincial Court of Circuit for the Centre Division, under Date the 9th November 1838, forwarding an Extract from the Proceedings of the same Date, requiring the Criminal Judge to make Return to the Precept of the 18th April last, which called for the Opinions of the several Authorities in the Centre Division on the new Criminal Code. The Precept of the 18th April having been mislaid by the late Criminal Judge, J. Paternoster, Esq., the Criminal Judge in the Zillah of Cuddapah begs to state, that as far as he has been able to give his Attention to the proposed Code that it seems adapted for the Purposes for which it is framed, and contains nothing exceptionable, with the Exception of Clause 468, Chapter XXIV., which seems to be at variance with the Law of England, or if merely meant as a concurrent Enactment will inflict a double Punishment for One Crime.

Given under my Hand and the Seal of the Court of Cuddapah this 31st December A.D. 1838.

(L.S.)

(Signed) P. H. STROMBOM, Criminal Judge.

(L.S.)

ACCORDING to the Exigency of this Precept which accompanied an Extract from the Proceedings of the Provincial Court of Circuit for the Centre Division, under Date 18th April 1838, together with a Copy of a Letter from the Register of the Court of Foujdarry Adawlut, dated 14th April 1838, directing the Criminal Judge to submit Remarks on the Code of Laws furnished to him from the Office of the Register of the Court of Foujdarry Adawlut.

The Criminal Judge has the Honour to state, that in his Opinion there is no Necessity whatever for the Code. The Criminal Regulations define Crimes and their Punishments sufficiently clear for all useful Purposes, and all that seems required is to collect the different Criminal Regulations into One Regulation, elucidating the whole with References to the Circular Orders of the Court of Foujdarry Adawlut, which have from Time to Time been issued in explanation of the different Provisions of the Regulations. All that relates to the Mahomedan Law in Cases tried before the Courts of Circuit might with great Advantage be struck out.

The Criminal Judge is also of opinion that the different Explanations and Illustrations of Crimes in the Code under Investigation will tend to confuse and embarrass the Natives who have judicial Powers, instead of aiding and assisting them in the Disposal of the Cases which are brought before them,

Given under my Hand and the Seal of the Court at Chingleput, this 3d Day of July A.D. 1838.

(Signed) J. HORSLEY,
Criminal Judge.

(L.S.)

IN making Return to the Precept calling for his Opinion on the proposed new Criminal Code the Joint Criminal Judge has only to state, that several attentive Perusals of it have extorted from him the greatest and most unqualified Approbation of the whole Body

Body of Law as therein proposed. He says, "extorted, because previously to having the whole placed in his Hands he had read Parts held up by superficial and ignorant Observers to public Ridicule, which Parts, when thus unfairly taken into separate Consideration, certainly afforded some Colour to such Flippancies. The Joint Criminal Judge is glad to have this Opportunity of recording his Opinion that a greater Benefit could not be conferred on this Country than the speedy Enactment of the Code; and that when it becomes known and understood it cannot fail to be considered as one of the most valuable Presents ever made by Civilization and Philosophy to Barbarism and Ignorance."

Given under my Hand and the Seal of the Court at Cuddalore this 7th Day of July in the Year of our Lord 1838.

(Signed) C. R. BAYNES, Assistant Judge.

OBSERVATIONS of MAGISTRATES on the Penal Code prepared by the Law Commissioners.

The Penal Code appears to me to be generally well adapted to the Purpose for which it is intended, the Arrangement of it simple, and the Punishment assigned to nearly every Species of Crime to be of such Latitude that, whilst they will admit of a very severe Penalty being inflicted in Cases of an aggravated Nature, it will still be in the Power of the Judge to modify it to almost any Extent in Cases where Leniency may seem to call for the Exercise of such a Discretion. Its beneficial Operation, however, when brought into practice, will almost entirely depend upon the Manner in which it is administered, which must depend on the Law of Procedure hereafter to be framed. The Extent of Punishment assigned by Law to a particular Crime is of comparatively small Importance to the Certainty of the Crime being promptly punished in some Manner or another; and if Facility to escape be afforded to Criminals, or the Forms by which the Law be administered be so tedious and dilatory as to deter Witnesses and Prosecutors from coming forward, the Penal Law will be of little Avail.

Few of the Clauses appear to call for any particular Remark; but such Observations as have occurred to me with respect to some of them, I here, with much Diffidence, submit. The Remarks being set down opposite to the Clauses themselves.

CHAPTER. III.

Clause 62.

Nothing is an Offence which is done by a Person who is, or in good Faith believes himself to be, commanded by Law to do it.

Illustration.

A., a Soldier, fires on a Mob by the Order of his superior Officer, in conformity with the Commands of the Law. A. has committed no Offence

This appears to me to be too general in its Application, and contrary to the Maxim "Ignorantia legis non excusat." In the Illustration, A., the Soldier, is supposed to fire on the Mob "in conformity with the Commands of the Law." In this Case he of course commits no Offence; but he may "in good Faith" believe himself to be commanded to do that which *in fact* is contrary to the Law. He may believe himself to be authorized to fire on the Mob *without* the Orders of his superior Officer; but would he not be guilty of an Offence if he did so? So also A., an Officer, may "in good Faith believe himself commanded" or authorized by Law to order his Men to fire on a Mob, for the Purpose of suppressing a Tumult, without having been called on to do so by the Civil Magistrate; but as this is contrary to the Law, would he not commit an Offence in so doing?

Again, in the Second Example (b), if A., an Officer of a Court of Justice, being ordered to arrest Y. for a Civil Debt, believing in good Faith that he is authorized to wound or kill Y. if he refuse to accompany him, or to put him in Irons, were to do so would not his doing so constitute an Offence?

Besides, how is a Person's real Belief or Knowledge of the Powers intrusted to him to be ascertained, except from his own Assertion. This Plea of a Belief that he was acting legally might always be set up in excuse for the most illegal Acts.

Chapter 79.

The Right of private Defence of Property extends, under the Restrictions mentioned in Clause 75, to the voluntary causing of Death or of any other Harm to the Wrongdoer, if the Offence the committing of which or the attempting to commit which occasions the Exercise of the Right be an Offence of any of the Descriptions herein after enumerated; viz.

3dly. Mischief by Fire committed on any Building, Tent, or Vessel, which Building, Tent, or Vessel is used as a Human Dwelling.

Clause 81.

The Right of private Defence of Property commences when the Danger to the Property commences.

The Right of private Defence of Property against Theft or Robbery continues till either the Offender has effected his Retreat with the Property or the Property has been recovered.

The Right of private Defence of Property against Criminal Trespass or Mischief continues as long as the Offender continues in the Commission of Criminal Trespass or Mischief.

The Right of private Defence of Property against Housebreaking by Night continues as long as the House Trespass which has been begun by such Housebreaking continues.

Clause 84.

Nothing is an Offence which is an Exercise of the Right of private Defence, or which would be an Exercise of the Right of private Defence if the Circumstances under which it is done were such as the Person who does it believes in good Faith that they are.

If by "Mischief" be here meant the setting fire to the Building, Tent, or Vessel, the Restriction requiring that it should be used as a Human Dwelling appears unnecessary and injurious. If I may kill a Man while attempting to rob my Property from a Godown or Tent not used as a Dwelling, surely I ought to be allowed to do so if he attempts to destroy the same Property by Fire.

The Injury in the latter Case is greater and more certain than in the former; for I might recover my Property if robbed, but cannot possibly do so if destroyed by Fire.

The Building which another attempts to set fire to may contain all the Property I have in the World, to the Value of Lacs of Rupees; but by this Rule the Attempt to set fire to a Stable full of valuable Horses, a Warehouse, or even a public Arsenal, could not be resisted by killing the Offender.

The Expression in the Second Paragraph of this Clause "till the Offender has effected his Retreat" appears very indefinite. What is to be considered as his having effected his Retreat?

The whole of this Clause, with the Exception of Paragraph First, appears open to Objection. In the Notes (Page 19) the Commissioners say, "It may be thought that we have allowed too great a Latitude to the Exercise of the Right of repelling unlawful Aggressions." To me it appears by this Clause the Right is too much restricted.

The Natives of this Country seldom recover from the Panic caused by an Attack, or think of Resistance, till a Robbery has been completed. They cannot, indeed, assemble in sufficient Numbers soon enough. If, therefore, a Village has been attacked and robbed by a Gang who have effected their Retreat with the Property to a neighbouring Jungle, the Villagers ought not to be precluded from attempting its Recovery, and the Seizure of the Robbers, even at the Risk of killing any of them.

Again, under the Fourth Paragraph of this Clause, "the Defence of Property against Housebreaking continues as long as the House Trespass continues," and no longer, so that if a Man has broken into a House, and carried off Property only just outside the Wall or Door of it, the Owner may not slay him in attempting to recover it.

Most of the Objections made to Clause 62 also apply to this Clause. A Person's simple "Belief in good Faith" that Circumstances are so and so ought not to be sufficient. There ought also to be sufficiently strong and just Grounds for his Belief. An Instance has been known of a Gentleman shooting his own Servant who had come into his Room at Night, mistaking him for a Robber, but he ought not to be held blameless on this Account.

He ought to have ascertained to a Certainty that he was a Robber before he killed him.

So in the Case put by way of Illustration, Z. might stop A. on the Road at Night, not by way of "Jest," but with the Intention of inquiring the right Road to some Place. If in this Case A. taking Alarm, and believing in good Faith that Z. was a Robber, were to draw out a Pistol and shoot Z., the Act ought not, it appears to me, to be held excused altogether by his mere Belief that Z. was a Robber, although it would form a reasonable Ground for a Mitigation of Punishment.

Clause 88.

Whoever previously abets an Offence by instigating any Person to commit that Offence shall, if that Offence is committed by that Person in consequence of that Instigation, be punished with the Punishment provided for that Offence.

This is a *general* Rule which would appear to be annulled by the subsequent Clauses. By Clause 90, for instance, whoever, by Instigation, attended with the actual Delivery of a Bribe, previously abets an Offence punishable with Imprisonment, may be punished with Imprisonment equal to One Fourth Part of the longest Term provided for that Offence.

Theft is an Offence punishable with Imprisonment. Under Clause 88 the Person instigating another to commit Theft is punishable, as I understand it, with the full Punishment for Theft; but under Clause 90 he is only punishable with a Fourth Part of that Punishment.

The only Difference between the Two appears to be that under Clause 90 the Instigation is attended with Bribery; but that would appear rather to heighten than diminish the Offence. So also in Clause 91.

Clause 90.

Whoever by Instigation, attended by the actual Delivery of a Bribe, previously abets an Offence punishable with Imprisonment, shall be punished with Imprisonment of any Description provided for that Offence for a Term which may extend to One Fourth Part of the longest Term provided for that Offence, or such Fine as is provided for that Offence, or both.

Illustration.

A. causes Money to be paid to B. in order to induce B. to give false Evidence. Here, whether B. gives the false Evidence or not A. has committed the Offence defined in this Clause.

Clause 95.

Whoever previously abets an Offence by engaging in a Conspiracy for the Commission of that Offence shall, if that Offence is committed in pursuance of that Conspiracy, be punished with the Punishment provided for that Offence, &c.

Clause 98.

Whenever, in an Attempt to commit an Offence, or in the Commission of an Offence, or in consequence of the Commission of an Offence, a different Offence is committed, then whoever, by Instigation, Conspiracy, or Aid, was a previous Abettor

In the Illustration to this Clause it is explained that the Abetment is a Crime whether the Offence be committed or not; but there is nothing in the Body of the Clause itself from which this can be understood. In the following Clause, No. 91, which is similar to Clause 90, except that the Abetment is attended with the Threat of Injury instead of Bribery, no Mention is made of its being punishable unless the Offence be actually committed. So important a Matter ought not to be left to be inferred from the wording of an Illustration.

What constitutes a "Conspiracy" is not defined. Does not a Person who instigates another (as in Clause 90) to commit an Offence by giving him a Bribe enter into a Conspiracy for the Commission of it; and if so, where is the Difference between the Two.

In Practice much Difficulty would be found in determining whether a Person "knew an Offence was likely to be committed or not." In Illustration (a), for instance, how could it be possible to determine whether A. considered Murder as

of the first-mentioned Offence, shall be liable to the Punishment of the last-mentioned Offence, if the last-mentioned Offence were such as the said Abettor knew likely to be committed in the Attempt to commit the first-mentioned Offence or in the Commission of the first-mentioned Offence, or in consequence of the Commission of the first-mentioned Offence; and if both Offences be actually committed, and the Person who has committed them be liable to cumulative Punishment, the Abettor shall also be liable to cumulative Punishment.

CHAPTER V.

Clause 111.

Whoever, with the Intention of inducing or compelling the Governor General of India, or the Governor or Deputy Governor of any Presidency, or any Member of the Council of India, or of the Council of any Presidency, to exercise or refrain from exercising in any Manner any of the lawful Powers of such Governor General, Governor, or Member of Council, assaults or makes show of assaulting, or wrongfully restrains or attempts wrongfully to restrain, or overawes by means of a riotous Assembly, or attempts so to overawe such Governor General, Governor, Deputy Governor, or Member of Council, shall be punished with Imprisonment of either Description for a Term which may extend to Seven Years and must not be less than One Year, and shall also be liable to Fine.

Clause 116.

Whoever, by Instigation, Conspiracy, or Aid, previously abets the committing of Mutiny by a Soldier or Sailor in the Service of the King or the East India Company, shall be punished with Imprisonment of either Description for a Term which may extend to Seven Years and must not be less than One Year, and shall also be liable to Fine.

Clause 127.

An Assembly of Twelve or more Persons is designated as "a riotous Assembly" if it is the Object of that Assembly to overawe the Legislative or Executive Government of India, or the Government of any Presidency, or any public Servant, or any Body of public Servants, in the Exercise of the lawful Powers of such public Servant or of such Body, or to resist the Execution of any Law, or to commit any Assault, Mischief, or Criminal Trespass, or wrongfully to restrain any Person, or to put any Person in Fear of Hurt or of Assault, or wantonly to insult or annoy any Person, or if that Assembly is attended with Circumstances which may reasonably excite Apprehensions that its Object is One of those aforesaid.

likely to be committed by B. or not. He ought to be liable to the Punishment for Murder, whether he considered it likely or not, as under the English Law.

Under this Clause the Punishment only extends to Persons who assault or restrain or overawe by means of riotous Assembly the Governor General, Governor, Deputy Governor, or Member of Council. As these high Functionaries are seldom or never in a Situation to be subject to such Treatment there appears no Reason for restricting it to them. Nineteen Times out of Twenty, the Attempt to overawe, &c., will be made on the public Servants under their Orders; not on them personally; such as the Collector or Magistrate, as in the late Rebellion in Canara. The Clause ought therefore to extend to overawing the duly constituted Authorities under Government, as well as the Members of Government, as in Section IV. Regulation III. of 1831 of the Madras Code.

As it is evident from the Tenor of the following Clause (117) that it is intended that the Instigation to Mutiny should be punished under this Clause even though the Mutiny may not be committed, it ought so to be expressed in direct Terms, by adding, for instance, the Words "if the Mutiny be not actually committed." The same Remark applies to Clauses 118, 120, and 122.

The Ambiguity caused by omitting to mention whether the Offence of Instigation be punishable if the Crime instigated be not committed is very apparent in the Chapter on Abetment, as before remarked.

The Definition of a "riotous Assembly" appears to be much too wide. The Assemblage of Thousands of Persons for the Purpose of "overawing" the Government of India is classed with and punished in the same Manner as the Assemblage of Twelve Persons for the Purpose of "insulting" a private Individual. Some of the Offences included in this Definition would more properly have been included in the Chapter of "Offences against the State."

Clause 139.

Whoever directly or indirectly accepts, obtains, or attempts to obtain from any Party, for himself, or for any other Party, any Gratification whatever, as a Motive or a Reward for inducing, by the Exercise of personal Influence, any public Servant to do or to forbear to do any official Act, or to show, in the Exercise of the official Functions of such public Servant, Favour or Disfavour to any Party, or to render or attempt to render any Service or Disservice to any Party, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any public Servant, as such, or with any Body of public Servants, as such, shall be punished with simple Imprisonment for a Term which may extend to Six Months, or Fine, or both.

Clause 153.

Whoever in any Manner intentionally prevents the serving on himself or on any other of any Summons or Notice proceeding from any public Servant, or Body of public Servants, legally competent as such public Servant or as such Body to issue such Summons or Notice, or intentionally prevents the lawful affixing to any Place of any such Summons or Notice, or intentionally removes any such Summons or Notice from any Place to which it is lawfully affixed, or intentionally prevents the lawful making of any Proclamation under the Authority of any public Servant or Body of public Servants, legally competent as such public Servant or as such Body to direct such Proclamation to be made, shall be punished with Imprisonment of either Description for a Term which may extend to One Month, or Fine which may extend to 500 Rupees, or both.

Clause 203.

Whoever, having been lawfully transported for a Term not extending to Life, returns from such Transportation, the Term of such Transportation not having expired, and his Punishment not having been remitted, shall be punished with Transportation for Life, and shall also be liable to Fine.

Clause 253.

Whoever, in dealing fraudulently, uses any Balance which he knows to be false, shall be punished with Imprisonment of either Description for a Term which may extend to One Year, or Fine, or both.

Clause 255.

Whoever is in possession of any Balance or of any Weight, or of any Measure of Length or Capacity, which he knows to be false, and which he intends to use fraudulently in dealing, shall be punished with Imprisonment of either Description for a Term which may extend to One Year, or Fine, or both.

It is stated in the Notes that this Chapter is intended to apply solely to Persons in public Employ, but it would appear that this Clause is intended to affect others than public Servants. If so, it would be better, for the sake of Perspicuity, to enter after the Word "whoever" the Words "not being a public Servant," or "whether being a public Servant or not." If it be intended to apply only to public Servants, the explanatory Phrase "being a public Servant" should be inserted.

It would be advisable to enter after the Words "or intentionally removes any such Summons or Notice" the Words "or intentionally defaces any such Summons or Notice," because a Person may as effectually defeat the Object of such a Document by defacing it as by removing it.

In Note A. Page 2. the Commissioners remark, "wherever we have made any Offence punishable with Transportation we have provided that the Transportation shall be for Life."

In these Two Clauses, false Balances, by which I understand Scales, are mentioned. Both the English Law and the Madras Regulations confine the wording in assigning Penalties under this Head to the Use of false "Weights and Measures;" and there appears strong Reasons why in India the Use or Possession of false, i. e., uneven Scales, should not be made punishable. The Scales used by the vast Majority of Traders in this Country are of the rudest Construction, and it would probably be difficult to find a single Pair of perfectly correct Scales of that Kind used by Shopmen in any Bazaar in India. Any one who has passed through a Bazaar may have observed these Kind of uneven Scales used. The Defect

is always obvious to the Purchaser, and previous to the Articles being weighed they are held up, and adjusted, by placing a small additional Weight in the lighter one. It is true that in Clause 255, where a Punishment is assigned for having them in possession, the *Intent* to use them fraudulently is named; but in this, as in other Instances through this Code, it appears doubtful how this Intent can be ascertained. It is observed that "Balances" are not named in Clause 254.

Clause 287.

Whoever, being a Subject of the King, and not a Native of the Territories of the East India Company, on his Arrival by Sea in any Place within the said Territories omits to make known in Writing his Name, Place of Destination, and Object of Pursuit in India, to the Chief Officer of Customs, or other Officer authorized for that Purpose, at the Place at which such Subject of the King has arrived, shall be punished with Fine which may extend to 1,000 Rupees.

Clause 290.

Whoever, having been convicted of the Offence defined in the Clause last preceding, again commits the Offence defined in the Clause last preceding, shall be punished with Banishment for Life or for any Term, or with simple Imprisonment for a Term which may extend to One Year, to which Banishment or Imprisonment Fine may be added.

Clause 299.

Voluntary culpable Homicide is "voluntary culpable Homicide in defence" when it is committed by causing Death under such Circumstances that such causing of Death would be no Offence if the Right of private Defence extended to the voluntary causing of Death in Cases of Assault not falling under any of the Descriptions enumerated in Clause 76, or in Cases of Theft, Mischief, or Criminal Trespass not falling under any of the Descriptions enumerated in Clause 79.

Clause 303.

Whoever commits voluntary culpable Homicide in defence shall be punished with Imprisonment of either Description for a Term which may extend to Fourteen Years, or Fine, or both.

Clause 309.

Whoever does any Act, or omits what he is legally bound to do, with such Intention or Knowledge, and under such Circumstances that if he by that Act or Omission caused Death he would be guilty of voluntary culpable Homicide, and carries that Act or Omission to such a Length as at the Time of carrying it to that Length he contemplates as sufficient to cause

In this Clause I would propose to insert the Word "intentionally" after the Words "within the said Territories." The unintentional Omission to make known his Name, &c. in Writing ought not to subject a Person to Punishment.

It is not clear what will constitute the Offence of "again" residing in the Company's Territories without Licence. If the Person be fined, or imprisoned for residing in the Company's Territory without Licence, and omits afterwards to quit them, has he committed the Offence "again." If so, the Time allowed for Departure ought to be defined, or a Power of Deportation given to the public Authority.

The whole of the Law laid down in these Clauses regarding "voluntary culpable Homicide in defence" appears to me to be out of all Proportion severe, and, considering the Circumstances of this Country, very objectionable on other Grounds. The firing at and killing of a Robber who is effecting his Escape with a Man's Property is made punishable with Imprisonment for Fourteen Years, and under Clause 309. if a Person pursues a Thief, and fires at him, without doing him the smallest Injury, he is punishable with Imprisonment for Three Years, or Fine, or both.

In their Remarks on Clauses 74 and 78 (Note B. Page 19) the Commissioners have stated the strongest Objections that can be urged against such an Enactment, the Patience with which Natives submit to the Depredations of Robbers, and the Policy of encouraging a manly Spirit of Resistance amongst them. The Madras Government have lately been endeavouring to inculcate the Belief amongst Natives that they will not be punished for resisting and slaying Robbers, and thus induce them to defend their Lives and Property; but it is quite evident that illiterate Natives never can be brought to understand the Refinements by which their Right to resist is distinguished, and where it is to terminate, and

Death, shall be punished with Imprisonment of either Description for a Term which may extend to Three Years, or Fine, or both.

Clause 315.

The following Kinds of Hurt are designated as "grievous :"

- 1st. Emasculation.
- 2d. Permanent Privation of the Sight of either Eye.
- 3d. Permanent Privation of the Hearing of either Ear.
- 4th. Privation of any Member or Joint.
- 5th. Destruction or permanent Impairing of the Powers of any Member or Joint.
- 6th. Permanent Disfiguration of the Head or Face.
- 7th. Fracture or Dislocation of any Bone other than a Tooth.
- 8th. Such Hurt that the Sufferer is during the Space of Twenty Days in bodily Pain, diseased, or unable to follow his ordinary Pursuits.

Clause 361.

Whoever, intending to gratify unnatural Lust, touches for that Purpose any Person or any Animal, or is, by his own Consent, touched by any Person, for the Purpose of gratifying unnatural Lust, shall be punished with Imprisonment of either Description for a Term which may extend to Fourteen Years and must not be less than Two Years, and shall also be liable to Fine.

Clause 362.

Whoever, intending to gratify unnatural Lust, touches for that Purpose any Person, without that Person's free and intelligent Consent, shall be punished with Imprisonment of either Description for a Term which may extend to Life and must not be less than Seven Years, and shall also be liable to Fine.

Clause 368.

Whoever intentionally puts any Person in fear of any Injury to that Person or to any other, and thereby fraudulently induces the Person so put in fear to deliver any Property to any Person, or to consent that any Person shall retain any Property, or to affix a Seal to any Substance, or to make,

(263.)

it is not difficult to suppose what incalculable Evils and utter Discouragement to all Resistance would be produced by the First Example of a Man's being punished under these Clauses* for attacking and killing a Thief or Robber who had plundered him, and was making off with his Property. The whole Body of the People would at once presume, and there would be no divesting them of the Idea, that he was punished for doing that, which we are now using our best Endeavour to persuade him to do. It would be nothing that the mitigated Penalty was inflicted; the very putting them on their Trial would be sufficient to deter them from offering Resistance in future.

I have previously alluded to this Subject in my Remarks on Clause 81.

There appears no Necessity for classing Emasculation under a distinct Head. Unless it were to be punished more severely, which it appears to me it ought to be, it would come within the Definition of either the 4th or 5th Class of "grievous Hurts."

The Delicacy with which the Commissioners have abstained from entering into any Particulars regarding this Class of Crimes (See Note M. Page 72) should still not go so far as to allow any Ambiguity to remain regarding the Meaning and Intent of a Penal Enactment. I make this Observation because it does not appear clear to me whether by the Term "touches" is intended the taking indecent Liberties with the Person, or the actual Commission of Sodomy.

By Clauses 368 and 369 the committing Extortion by putting a Person in fear of "any Injury" to that Person is punishable at the utmost with Three Years Imprisonment, but by Clauses 370 and 371 the committing Extortion by putting a Person in fear of "grievous Hurt" is

alter, or destroy the whole or any Part of any Document which is or purports to be a valuable Security, is said to commit "Extortion."

Clause 369.

Whoever commits Extortion shall be punished with Imprisonment of either Description for a Term which may extend to Three Years, or Fine, or both.

Clause 370.

Whoever, in order to the committing of Extortion, puts any Person in fear, or attempts to put any Person in fear, shall be punished with Imprisonment of either Description, for a Term which may extend to One Year, or Fine, or both.

Clause 371.

Whoever commits Extortion by putting any Person in fear, for that Purpose or for any other, of Death or of grievous Hurt, shall be punished with Imprisonment of either Description for a Term which may extend to Fourteen Years and must not be less than Two Years, and shall also be liable to Fine.

Clause 373.

Whoever commits Extortion by putting any Person in fear of being falsely accused or defamed as a Person under the Influence of unnatural Lust shall be punished with Imprisonment of either Description for a Term which may extend to Fourteen Years and must not be less than Two Years, and shall also be liable to Fine.

Clause 374.

Whoever, in order to the committing of Extortion, puts any Person in fear, or attempts to put any Person in fear, of being falsely accused or defamed as a Person under the Influence of unnatural Lust, shall be punished with Imprisonment of either Description for a Term which may extend to Seven Years and must not be less than One Year, and shall also be liable to Fine.

Clause 376.

Where Six or more Persons conjointly commit or attempt to commit a Robbery, or where the whole Number of Persons conjointly committing or attempting to commit a Robbery, and Persons present and aiding such Commission or Attempt, amounts to Six or more, every Person so committing, attempting, or aiding is said to commit "Dacoity."

Clause 386.

Whoever, being intrusted with the keeping of any Property or with any Dominion

punishable with Fourteen Years Imprisonment. The Distinction between "any Injury" and "grievous Hurt" does not appear to be sufficiently defined, or in any Event to warrant the great Disproportion of Punishment here assigned. "Injury" is defined by Clause 29 to consist of "any Harm whatever illegally caused to any Party in Body, &c.," which Definition will embrace every Species of grievous Hurt as defined in Clause 314.

These Two Clauses only provide against Extortion by putting a Person in fear of being accused of One Species of Crime. There appears to me to be no sufficient Reason for providing only against this One Instance, and leaving all others unprovided for, or why Extortion committed by putting a Person in fear of being accused of Murder, Treason, Rape, Robbery, or any other heinous Crime should not also be made punishable with nearly, if not quite, equal Severity as Extortion committed by putting a Person in fear of being accused of an unnatural Crime.

The Term "Dacoity" is a local Native Term principally confined to the Bengal Presidency, and for the most part unknown in that of Madras. If an English Term equally expressive can be found it would appear more advisable to adopt it in a Code intended to have Effect throughout all India; and I think that used in the Madras Regulations, viz., "Gang Robbery," would be equally appropriate and more generally understood, besides being English. The Word "Dacoity" is the only Native Term used throughout the whole of this Code.

It would be as well to include in this Clause the "malicious" Intention of caus-

over any Property, and intending fraudulently to cause wrongful Loss or Risk of wrongful Loss to any Party for whom he is in trust, disobeys any Direction of Law prescribing the Mode in which such Trust is to be discharged, or violates any legal Contract, express or implied, which he has made touching the Discharge of such Trust, with any Party from whom such Trust was derived, is said to commit "Criminal Breach of Trust."

CHAPTER XXIII.

Clause 463.

Whoever, being bound by a lawful Contract to convey or conduct any Person or any Property from one Place to another Place, illegally omits so to do, intending or knowing it to be likely that such illegal Omission will cause Injury to some Party, shall be punished with Imprisonment of either Description for a Term which may extend to One Month, or Fine, which may extend to 100 Rupees, or both.

ing Loss, as well as the "fraudulent" Intent to cause Loss; for example, A., a Servant, is intrusted by B., his Master, with valuable Property, to be carried to a certain Place; A., owing his Master a Grudge, willfully allows it to get damaged, or abandons it on the Road; here he does not act fraudulently, because he proposes no Gain to himself, but he is maliciously guilty of "Criminal Breach of Trust," and ought to be punished for it.

The Commissioners in their Note (P.) state, that they have intentionally omitted to punish Servants for this Offence, although they have been urged to do so, because "good Masters are not in much Danger of "being voluntarily deserted by their Servants," and because the Loss occasioned by such Desertion would not often be of a serious Description. But good Masters *may* sometimes be abandoned by their Servants, and it may sometimes be the Occasion of most serious Loss and Inconvenience. It ought, therefore, to be provided against. A Person at a large Station may no doubt easily replace a Servant who quits him without Notice; but if the Servants of a Gentleman marching through a wild Country, where no others can possibly be procured, abandon him, the Loss and Inconvenience may be to the full as great or greater than if his Palanquin Bearers put him down and ran off. It is not an uncommon Practice at some Places for Servants to engage to go up the Country with Gentlemen, and at the Moment of Departure, when everything has been arranged, and Delay out of the Question, to refuse to go, with the Intention of forcing their Masters to increase their Rate of Pay, or extort some other undue Advantage.

The Commissioners object that it would give no Protection to good Masters, but Means of Oppression to bad ones; but admitting that this might by Possibility sometimes be the Case (which Argument, however, is equally applicable to Palankeen Bearers), still it would be better, instead of leaving *all* Cases, of however aggravated a Nature, unprovided, to make the Offence punishable, and leave the Judge to determine from the Circumstances of each Case, and the Evidence, whether the Master had or had not brought the Loss and Inconvenience on himself by his Conduct towards his Servant.

Illustration.

I once hired a Servant at Bombay to go down with me by Sea to Goa, and from thence to Darwar. On arriving at Goa I was taken ill with Fever, and confined to my Bed; and whilst in this helpless State, at a Foreign Station, was told by my Servant that he had altered his Mind about going on, and intended returning to

Bombay by the same Vessel I had come down in ; and it was only by Threats of appealing to the Police, and the Promise of a considerable Present, that I could induce him to fulfil his Engagement. Had he not had the Fear of the Law before his Eyes this Fellow would have gone off and left me to my Fate.

(Signed) T. L. BLANE,
Magistrate of the Zillah of Cuddapah.

1. In compliance with the Exigency of this Precept, which accompanied Extract from the Provincial Courts of Circuit under Date the 9th November, ordering the Acting Joint Magistrate of Cuddapah to make Returns to the Court's Precept dated 18th April, calling for his Opinion on the new Penal Code, the Joint Magistrate of Cuddapah has the Honour to state that it is his decided Opinion that the Indian Law Commission, in having framed a Body of Law like the One in question, embodying as it does many Points of Jurisprudence hitherto omitted, and framed as it is with many Illustrations which cannot but greatly facilitate the Understanding of the Law, have accomplished with great Success the difficult Task imposed upon them.

2. The Merits of this new Penal Code will doubtlessly have been expatiated on by experienced Judges of the Service, and as no new Code of Law can reasonably be expected to be so perfect as not to admit of being improved, their Suggestions on any Points they may have offered where Doubts as to Construction have arisen, or where Modification seems desirable, will, there is every Reason to hope, render it very shortly so. The Joint Magistrate of Cuddapah feels his Inadequacy to suggest Improvements, from Want of Experience in Judicial Matters, yet he has with Deference ventured upon these few following Remarks.

3. In the Chapter of Punishments, Note A. Page 6, the Commission have proposed to limit the Amount of Fine to be imposed as Punishment in Cases only which are not heinous, and to establish such a System of Appeal as will prevent great and frequent Injustice from Judges inconsiderately inflicting Fines on Persons guilty of serious Offences, in Cases of which Descriptions the Amount of Fine to be imposed has been entirely left to their Discretion. The Reasons assigned by the Law Commissioners for so proposing are, that if the Amount of Fine were limited it would be either so high as to be ruinous to the Poor, or so low as to be no Object of Terror to the Rich ; that to the former, it is a Matter of absolute Indifference whether the Fine to which he is liable be limited or not, unless it be so limited to render it quite inefficient as a Mode of punishing the Rich ; that a wise and just Judge, in using his boundless Discretion, will not sentence an Offender to the Fine of 100 Rupees who is no more able to pay that Sum than a Lac ; and that if the Fine was limited to that Sum an unjust and inconsiderate Judge would have it in his Power to inflict on such an Offender all the Evil that can be inflicted on him by means of a Fine.

4. It no doubt is impracticable to act up to any specific Rule laid down for fining for particular Offences Persons both in affluent and indigent Circumstances, by taking into consideration also the Property of the Offender, with a view of making the Punishment equally painful to all, as every Case must necessarily involve a double Investigation, by every Obstacle being thrown in the Way towards the pecuniary Circumstances of the Offender being correctly ascertained ; yet in the Opinion of the Joint Magistrate it seems desirable that the Fine to be imposed should be limited also in Cases of a more heinous Nature, so limited that it may be considered an Object of Terror to the Rich, and that the Discretion of the Judge should be, the Protection towards the poorer Offenders. It seems to him unreasonable to suppose that under our present System of Court Judicature the Fine being limited for the Punishment of richer Offenders will be the Means of Injustice being done to the poorer because the Judge has it in his Power to inflict on the latter all the Evil that can be inflicted on him by means of a Fine. There appear very good Grounds for not limiting the Fine so low as to render it quite inefficient as a Mode of punishing the Rich, but none whatever that he can perceive for not limiting it so high as to be dreaded by them. In Cases when rich and wealthy Offenders are brought before the Court, their Knowledge that no Sum is specified in the Penal Code as considered as a Fine adequate to the Character and Magnitude of the Offence with which they are charged and of which they have been found guilty, that the Fine to be imposed on them is unlimited, and left entirely to the Discretion of the Judge, will induce them in every Case decided against them to appeal to higher Authorities, in hope of getting a Portion of the Fine remitted, which will cause a double Investigation in most Cases, and impose groundless Duties on the Judges of the Provincial Courts.

5. The Joint Magistrate of Cuddapah begs leave to dissent from the Opinion expressed by the Law Commission in regard to its not being advisable to place on the List of Punishments the public Exhibition of an Offender on an Ass. Its Severity is its Wholesomeness ; but it cannot be considered too severe in proportion to the Enormity of

of the Offence for the Punishment of which it is intended, as the Object of all Punishments is to check Crime, by causing Pain to the Offender and instilling Terror in his Mind sufficient to prevent him from committing the Offence, and in his humble Opinion the best Proof as to its being too severe would be its being ascertained that the Offences for which this Punishment is intended are never committed. Moreover, he would advocate that the beneficial Effects which have arisen from this Punishment having remained on the List of those sanctioned by Government should not be counteracted, by the Evil that must arise by its being abolished. Its deriving its Severity from the higher and better Parts of the Character of the Man, as expressed in the Opinion of the Law Commission, ought surely, if true, to prevent those of such quick and sensitive Feelings from rendering themselves liable to it. The virtuous and honourable Feelings of a Person do not vanish and return as the Weather changes; vanish so as to allow him to commit the Offence, and return so as to affect him deeply when he is made to suffer for having so done. Of the Inequality of the Punishment he has no Doubt; but he differs with the Opinion formed by the Law Commission in regard to the Cause of its Inequality, as also as to the Cause of its Severity. A Man may have less sensitive and honourable Feelings than another, and yet dread the Punishment considerably; while to the other it is a Farce, and no Punishment at all. It is owing to the Distinction of Castes that it is so unequal in its Effects, more so than any other Punishment; although all Punishments must be considered unequal, varying according to the hardened and redeemable Qualities of the Offender. To Persons of low Caste it is not considered so degrading; but this cannot be reckoned, owing to their Feelings being less acute and sensitive than those of some of higher Castes, who may, perhaps, think less of the Offence, and only dread committing it because the Punishment is among their Caste considered degrading, and not because under any other Circumstances it would be over-hurtful to their Feelings. His Remarks apply chiefly to Cases of Perjury, for which Crime he strongly recommends the Punishment to be adopted.

6. The Difficulty in proving the Crime of Perjury (although Witnesses are purchased as cheap as Nuts in every Place) renders it particularly necessary that the Punishment thereof should be severe; and here the Joint Magistrate begs to say, that he has never discovered that the higher Castes among the lower Classes of Natives are in the least more veracious than their Neighbours whom they look down upon. On the contrary, from his Observations made he is inclined to be of opinion that they think less of uttering a Falshood than others. They seem to think themselves privileged in this respect, under the Idea that their Caste exculpates them, particularly when they have an Object in view. Their Sastrums support them in this, as well as that it is excusable in all to tell a Falshood on Oath in the Cause of a Brahmin.

7. The Punishment is equally dreaded almost by every Hindoo, whether his Feelings be virtuous and honourable or otherwise; and it is certainly some Check towards Perjury, a Crime which, as he has above hinted, he is inclined to think prevails too much with Impunity, owing, he must presume, firstly, to the Mode of administering Oaths not being sufficiently binding to the Consciences of Witnesses, and, secondly, to Natives being too well acquainted with the Regulations and Circular Orders, the Definition of Perjury as laid down therein, to render themselves liable to the Punishment by contradicting themselves. Nevertheless the Dread of the Punishment is productive of some, and an occasional Example, on its being actually enforced, of considerable Benefit. In regard to those who it is supposed think lightly of it, the Judges can use their Discretion, by commuting it for Imprisonment.

8. Under the Impression that the Cause of the Inequality of this Punishment does not rest exclusively on the Feelings of the Individual sentenced to it, that its Severity does not vary entirely in proportion to the sensitive or obtuse and hardened Feelings of the Delinquent, and consequently decidedly differing in opinion, that the Severity of the Punishment is in inverse Proportion; for the Necessity for Severity the Joint Magistrate cannot coincide with the Sentiments expressed by the Law Commission towards its Abolition. In Cases of all Sorts it will occasionally happen that a Person sentenced to Punishment has been led to commit the Offence he has been found guilty of by Temptation, and that he may be reclaimed. This is by no means easily ascertained, but when so it will not be too late for the Judges to show Leniency, as recommended by the Law Commission; but it cannot be considered just and equitable to sacrifice the Interest of a whole Community, to guard against the Possibility of any Person being thus too severely punished, by abolishing a Punishment he considers so wholesome, and one more conducive towards eliciting Truth in all Cases of Investigation than any others, owing to its being, for Reasons above explained, so much dreaded.

9. The Joint Magistrate cannot but think that the total Abolition of Flogging will be productive of Evil, however much the System of Prison Discipline may be reformed. In every District there are a Set of hardened able-bodied Vagabonds, too idle to work or gain for themselves an honest Livelihood, who live upon pilfering, and are perfectly indifferent about undergoing Imprisonment as a Punishment, and to whom Corporal Punishment is not ignominious, but decidedly the only one that they in the least dread.

10. In explanation of the Delay that has occurred in transmitting this Return to the Court's Precepts of the 18th April 1838 and 9th November 1838, the Joint Magistrate begs to state that on the Receipt of the former he was in charge of the District, and by some

Overnight did not observe that the Joint Magistrates were required to offer their Opinions on this Penal Code, and that subsequent to the Receipt of the latter Precept his Time has been much taken up in Revenue Affairs, owing to the Settlement of his Division having been commenced, as also to several Cases of Inquiry he has had to make. He trusts this Explanation will exonerate him from all Censure and Adversation from the Provincial Court of Circuit.

Given under my Hand and Seal this Day, the 7th February 1839.

Joint Magistrate's Office on Circuit at Markapoor }
in Doopand Talook, 7th February 1839.

(L.S.)

(Signed)

J. H. COCHRANE,
Joint Magistrate.

(No. 323.)

(L.S.)

Paragraph 1. The Acting Magistrate of Chingleput has the Honour to acknowledge the Receipt of the foregoing Precept desiring him to state his Sentiments relative to the proposed Criminal Code, a Duty which, from the well-known Talents of those by whom it was drawn up, and the Labour and Consideration bestowed thereon, he enters upon with the utmost Diffidence; but the Duty having been imposed upon the Acting Magistrate, he begs to submit a few general Observations that have occurred to him during the Perusal of the Code.

2. The Law Commissioners have, in their Address to the Right Honourable the Governor General, on transmitting the Draft of the Code, most justly remarked, that "there are Two Things which a Legislator should always have in view while he is framing Laws. The one that they should be as far as possible precise; the other, that they should be easily understood." In both these Points the Acting Magistrate fears the Code as it is now drawn up fails. He cannot but consider the numerous Explanations, Definitions, and Illustrations not only to have swelled the Code to a most inconvenient Extent, but to have rendered it a more closely sealed Book than the old Law to the Mass of the People; an Alteration in these Points would therefore, the Acting Magistrate thinks, be attended with Advantage, whilst such Matter as might be considered necessary to elucidate or illustrate the Code might be published under Authority in a separate Treatise.

3. With regard to the Chapter on Punishments, the Acting Magistrate coincides generally in the Opinions expressed and Arguments adduced in support thereof, with the Exception of those relative to the total Abolition of Corporal Punishment. The Arguments adduced on that Point appear to him to be rather theoretical than practical. A large Portion of the Offenders in every District are, there is no Doubt, composed of the lowest Classes and wandering Tribes; Men addicted to petty Thefts, such as of Grain Stealing, &c., and to whom Imprisonment, either rigorous or solitary, for short Periods, is, from the usual Course of their Lives, no Punishment at all, and who could in no way be so well punished, without the Necessity of using such Severity as would render the Infliction open to the Objections of Cruelty, as by Corporal Punishment. In urging this Point the Acting Magistrate is far from advocating the shameful System of stimulating subordinate Police Officers by Stripes, or the Corporal Punishment of those who would thereby be rendered or feel themselves the Objects of Contempt to the Mass of the Population, but would leave the Power of inflicting Corporal Punishment for petty Thefts in the Hands of the Magistrates, who he considers might be safely intrusted therewith, and which Power they would no doubt use with due Discretion, and in accordance with the known Wishes of Government, to limit such Punishment, as far as possible. And further, with regard to Punishments, the Acting Magistrate considers that the affixing a Minimum for Offences to be objectionable, because some mitigating Circumstance may appear on the Trial which would render a slighter Degree of Punishment sufficient. Thus, for example, by Clause 217, "whoever performs any Part of the Process of counterfeiting any Stamp from which the Government derives a Revenue shall be punished with Imprisonment of either Description for a Term which may extend to Seven Years and must not be less than One Year, and shall also be liable to a Fine;" but we will suppose the Case to be One where the counterfeited Stamp is One affixed to a Cloth, with the Object of evading a slight Duty. The Offence is in reality a Breach of the Revenue Laws, and a slight Fine or One Month's Imprisonment would be an ample Punishment; but still, as all Criminal Laws must be most literally interpreted, the Offence comes under the Clause here defined, and One Year would be the lowest Period to which the presiding Judge could sentence the Party. There are other Clauses to which the Acting Magistrate thinks similar Objections might be urged, as for instance, Clause 276, "Whereby whoever voluntarily causes Disturbance to any Assembly lawfully engaged in the Performance of Religious Worship or Religious Ceremonies, if in causing such Disturbance he assaults any Person or makes Show of assaulting any Person, or threatens to assault any Person engaged in such Worship or Ceremonies, shall be punished with Imprisonment of either Description for a Term which may extend

" extend to Three Years and must not be less than Six Months, and shall also be liable to Fine."

4. The Law Commissioners have expressed a Desire that the Opinions of Natives relative to the Code should be obtained. The Acting Magistrate has therefore taken the liberty of forwarding the enclosed original Observations presented to him by the Acting Deputy Sherishtadar of his Cutcherry, and though he does not quite agree with him in the Opinions he has formed, considers the Paper, as his own unassisted Production, to do him considerable Credit.

5. There remains One Point for the Acting Magistrate to notice, viz., that no Punishment appears to be laid down in the Regulations for the Punishment of Peons or Burkundazies who, through criminal Neglect, permit the Escape of Prisoners placed in their Custody. This is an Offence of frequent Recurrence, and the Acting Magistrate considers calls for some severer Punishment than Dismissal.

6. In conclusion, the Acting Magistrate would apologise for the Brevity of his Remarks and Delay in replying to the foregoing Precept, trusting that the Judges of the Provincial Court will consider the constant Call upon his Time and Attention from the current Business of his Charge, a sufficient Cause thereof.

Given under my Hand and Seal, at Poonamalee, this 20th Day of December in the Year of our Lord 1838.

(Signed) A. FREESE,
Acting Magistrate.

Memorandum.—Observations of the Acting Deputy Sherishtadar, V. Streenevasiah, on the Penal Code.

The greatest Defect in this Code is the entire Abolition of Corporal Punishment. The Law Commissioners consider this Punishment not only cruel and disgraceful to Men of decent Stations in Life, but as unnecessary in any Case. They, however, admit in another Place that the Criminal for whom Disgrace has no Terrors dreads nothing but physical Suffering, Restraint, and Privation, and he who laughs at Infamy is the very Criminal against whom the whole Rigour of the Law ought to be put forth. The greatest Part of Offenders are undoubtedly of this Description; as in India, if not in all other Countries, Ignorants and the Depraved form the greater Portion of the Population, whom it would be useless to punish in the same Manner as the few whose Character gives Hope of Reformation. Exhibition on a Pillory or an Ass may not be a Disgrace to shameless Delinquents; but Flogging not only inflicts Disgrace on such Men, but causes a bodily Suffering which, moderate as it is, deters the Sufferer from Wickedness. It is certainly a most impolitic Measure to endeavour to stimulate the lower Officers of Police to the active Discharge of their Duties by Flogging, but the young Offender, in whose Case the Commission would seem disposed to consider Flogging as justifiable, cannot be so easily corrected by Confinement or Labour as by a few Stripes; and in like Manner, Men who have no Character to lose cannot be so effectually deterred from the Commission of Thefts and other petty Offences by any ordinary Sort of Punishment as by Flogging. Punishment is intended as an Example to others, but a lenient Punishment, which is only sufficient to correct an unaccustomed and penitent Offender, is no Example in a Country where even Mutilation is not regarded as too severe a Punishment, and will, instead of preventing the Commission of Offence, encourage it in a degree which in a few Years would become almost intolerable. It seems, therefore, most unadvisable and dangerous to dispense with Corporal Punishment altogether, either in anticipation of a State of Civilization which it is uncertain will ever be brought about, or with the view of saving an inconsiderable Portion of a Population from too serious an Ignominy. The latter End can without Difficulty be attained by declaring Offences punishable by Flogging also punishable by Imprisonment or Fine, according to the Discretion of the Judge or Magistrate, who will proportion his Sentence to the Character of the Offender as well as the Nature of the Offence.

The Law Commission expresses a doubt as to the Propriety of punishing the Giver of a Bribe. Upright and scrupulous public Servants are often tempted by Bribery to favour a bad Cause, and though in many Instances common Justice could not be obtained without giving a Bribe, it is impossible to determine whether the Giver or Receiver is the Cause of this Corruption; both are more or less concerned, and should be punished as the Thief and Receiver of stolen Property. Nothing can be more injurious to good Faith than to suffer One who has attempted to corrupt the Virtue of an honest public Servant to go unpunished; but, if necessary, an Exception may be made in favour of the Giver in such Cases where it could be satisfactorily proved that he had really been compelled to give a Bribe.

The Law Commission seems to consider that the European and Native of India ought not to be subjected to the same System of Prison Discipline, and the Ground of this Opinion is the physical Difference which exists between the one and the other. There ought to be as little Inequality as possible in the Punishment and Treatment of Criminals, and the only Circumstance hitherto known to justify a Deviation from such Rule is the Difference in the moral Character borne by them. If One Offender can be considered

Corporal Punishment, Notes, pp. 12 and 13.

Bribery, Notes, p. 37.

Punishment of Europeans, Notes, p. 3.

considered entitled to a greater Indulgence than another, upon the Ground of physical Difference or any such other Plea, there may be a physical Difference, more or less, between the People of the different Parts of India, the Climate of which differs so much that the Natives of one Part can hardly preserve their Health in another. If indeed the vast Number of Europeans residing in India at the present Day would justify the Law Commissioners in asserting that Existence in this Country is almost *constant Misery* to them, it is very doubtful if they would be justified in showing a Desire to save Englishmen of the worst Description from being placed in degrading Situations, and engaged in the ignominious Labour of a Gaol equally with the Natives of India. This seems to be a Distinction which no Government pretending to Impartiality ought to maintain, and it is something like the indulgent Consideration recommended by the Hindoo Law in favour of Brahmin Offenders, which is disapproved and ridiculed by the European Nation. The Law Commission, in vesting the Government with the Power of commuting Imprisonment (even without the Consent of the Offender) for Transportation or Banishment, in the Case of a Person who is not both of Asiatic Birth and Asiatic Blood, would seem to waive the Punishment due to the Offence of such Person, because the Punishment of Transportation would not inflict Half as much Terror and Loss upon an European as upon a Native of India. The British Character does not require to be preserved by saving the worst Description of Englishmen from any particular Species of Punishment. That they are the Conquerors of this Country, itself holds that Character in high Estimation; and any Distinction made in the Punishment of Englishmen and Natives will, I fear, instead of upholding, lower that Character in the Eyes of the Public.

Punishment of
deserting Servants,
Notes, p. 88.

The Law Commission thinks it unnecessary to make Breaches of Contract by menial Servants Offences, "because in the present State of the Market for such Description of Labour in India good Masters are not in much Danger of being voluntarily deserted by their menial Servants, and because the Loss or Inconvenience occasioned by the sudden Departure of such Servants would not often be of a very serious Description." This is perhaps the Case with European Masters, whose menial Servants consist generally of the lowest Classes of this Country, who could not obtain such Employments under their own Countrymen. The Want of Positiveness in the Terms in which the Law Commissioners speak on this Subject would itself weaken the Force of their Argument, and this Argument is altogether inapplicable to the Cases of Native Masters, who cannot so easily procure or dispense with the Service of Menials. Each Caste requires its own lower Orders to be its Servants, and the Difficulty of procuring such Servants will no doubt be much increased by their being suffered to desert with Impunity. Servants are generally more ignorant and therefore more likely to do Wrong than their Masters; and even now, when there is a Punishment provided for Desertion by the Madras Police Regulations, such Desertion is of frequent Occurrence, and the Inconvenience thereby occasioned so great and serious that it would not be proper to give Servants the Choice of quitting one's Service whenever they please, and without giving previous Notice.

Marriage and
Adultery, Notes,
pp. 89 to 93.

The Provisions of the Chapter of Offences relating to Marriage seem to be almost entirely applicable to the European Nation. There is a Description of Deceit practised in this Country by the lower Classes of Natives which under British Rule is not an Offence, but which inflicts serious Inconvenience and Loss upon the Sufferer. This is the Breach of Engagement once made by the Parents of a Girl to give her in Marriage to a particular Person. Such Engagement is solemnized a few Days before the Marriage by a particular Formality termed "Nistamboolan," and a Breach of it is illegal, according to Hindoo Law, and an Offence equal to any described in the Chapter above mentioned. It is often the Source of serious Disputes between Families, but it is at present a Complaint which nobody is authorized to hear and settle. A Provision for punishing this Offence is therefore very much wanted, and to such Punishment both the Person who marries a Girl once engaged for another Person and the Individual who gives the Girl in Marriage, knowing that she had been so engaged for another Person, should be subjected.

Adultery, which ranks amongst heinous Offences, and which is most pernicious to the Well-being of Society, is declared by the Law Commissioners as unpunishable. The chief Ground of this Opinion is the Prevalence of Polygamy in this Country; but it is doubtful whether the Commission have taken into their Consideration under what Circumstances and Restrictions Polygamy is allowed. The Hindoo Law permits it only in Cases where a Wife first married has proved barren after a Trial of Twelve Years, or is afflicted with an irrecoverable Disease, or addicted to irremediable unvirtuous Habits, provided these Qualities have been established to the Satisfaction of the Society in which the Parties move. It must also be remembered, that it is not only in Cases where a Man has more than One Wife that Adultery is committed, but Women who are the only Wives of their Husbands, and to whose Comfort and Happiness all possible Attention is paid, often corrupt their Chastity in consequence of immoderate Lust, or any Defect in the Graces and Qualities of their Husbands, or from Want of reciprocal Affection, or such other Causes not less forcible than that of having Rivals, which cannot therefore justify the Commission of Adultery. Offences of this Kind are inexcusable under any Circumstances, and whatever may be their inherent Causes; and as the Laws and Customs of One Country must necessarily vary in some respects from those of another, that can be no Reason for exempting from Punishment an Act which is admitted by all Nations to

be a Crime, and which is the soul of the Well-being of all Societies. If the higher Classes of Natives show little or no Desire to bring their corrupt Wives to Justice, and if the lower Classes content themselves with a Compensation which would enable them to remarry, it is partly owing to the Indignation which a public Prosecution causes, and the helpless Condition of the Poor, and partly to the implied Indifference with which the Unchastity of Females is understood to be viewed by European Judges. Adultery cannot be considered as an Offence unpunishable by Kings, as ingratitude and other Immoralities which do not (like a Breach of matrimonial Contract) cause any apparent Violation of the Rules under which Society is held together in the World; and unless it is, as peremptorily required to be, brought forward and punished as Theft, Robbery, Murder, &c., the Country will by Degrees of Time be filled with corrupt Females and Bastards, and the State of Society will be deplorable. It is therefore indispensably necessary to the Well-being of the People to award such Punishment to Adultery as can be devised consistently with the enormous Nature of the Offence and British Jurisprudence.

In the Chapter of Offences relating to the Revenue it is proposed to punish Persons who perform any Part of the Process of counterfeiting a Stamp from which the Government derives a Revenue, or who keep or make any Implement intended for counterfeiting such Stamp, or who keep or sell such counterfeited Stamp, with Imprisonment for Seven Years. This Punishment seems to be rather too severe, and is much more heavy than the Penalties prescribed for the Offence of counterfeiting Coins, which is of equal if not greater Gravity; but whilst the counterfeiting of a Stamp is intended to be so severely punished, the Offence of *using* it is proposed to be punished only with an Imprisonment of Six Months. The using of a counterfeited Stamp, knowing it to be a Counterfeit, is, I conceive, a graver Offence than that of counterfeiting it, as in the latter the Object of the Performance is not actually effected as it is in the former. I should therefore think that an Imprisonment of Six or Twelve Months would be a sufficient Punishment for counterfeiting a Stamp or using a counterfeit Stamp.

Chapter II., p. 56.

In the Chapter of Criminal Intimidation, Insult, and Annoyance, the Punishments awarded also appear rather too severe. For Want of Notes on this Chapter I am unable to understand exactly the Difference between mere "Criminal Intimidation" and "Criminal Intimidation, having taken Precaution to conceal the Quarter from whence the Threat comes." The one is declared punishable with Imprisonment of Two Years, and the other Three Years. Again, the Offence of uttering any Word, making any Sound, Gesture, or Exhibition, to insult any Person, is proposed to be punished with Three Months Imprisonment, and this Imprisonment is extended to Two Years when the Insult is offered to a *Woman*. Although an Insult offered to a Woman is more serious than that offered to a Man, yet it might be sufficient to double the Punishment in the Case of the former.

Chapter XXVI., p. 129.

The Principles by which the Law Commission was guided in awarding and proportioning the Punishments and Penalties are not so well explained in the Code as to enable one to judge with Precision the Severity or Leniency of the Punishment attached to each Offence; and therefore it may not be prudent, without a full Knowledge of their Reasons, to question the Extent of the Penalties prescribed by them, which, though apparently too heavy or too light, may in reality be moderate and sufficient.

26th November 1838.

(Signed) V. STRENEVASIAH.

In conformity to the above Precept, transmitting an Extract from the Proceedings of the Provincial Court, dated 18th April 1838, with Copy of a Letter from the Court of Foujdarry Adawlut to the Provincial Court of Circuit, dated 14th April 1838, requesting them to collect the Opinions of Criminal and Joint Criminal Judges, Magistrates and Joint Magistrates, on the proposed Penal Code prepared by the Indian Law Commissioners, and requiring those Authorities to submit any Remarks they may wish to offer upon any of the important Subjects to which the Code relates, and to point out such Defects and to suggest such Improvements as may either occur to themselves or be offered by intelligent public Officers or Individuals who they conceive may be consulted with Advantage, the Acting Joint Magistrate of Bellary has the Honour to submit the following Remarks which have occurred to him.

CHAPTER II.

Punishments.

By these Clauses Power is conferred to banish from his native Country, India, a Person born in India of English Parents, and a Person born in England of Parents of Asiatic Birth and Asiatic Blood, and whose Residence may, nevertheless, be generally in India. In the one Case the Person born of English Parents banished from India, his Birth-place, would be a Vagabond without a Claim upon any one, not even a Parish (which all Persons of English Birth are entitled to), and in the other Case, a Man (but for his mere accidental Birth in England), in all other respects a real Native of India, may be banished from India, and claim Protection from his Parish in England. The Clause in this respect seems to be objectionable.

Clauses 43. and 44.

Clause 49. Would this Clause make any Property ~~entailed upon A's Son~~ forfeited to Government for ever, or for any Period?

Clause 57. With reference to the Notes on the Subject of this Clause, a Modification might be made as to the Liability of the Offender to pay the Fine demanded at a Period after his Release from Imprisonment; viz., that this Liability should *only* extend to Cases wherein the Offender has been a real Gainer in Property by his Act, which Liability might extend, perhaps, even beyond a Period of Six Years as he becomes a real Debtor to the Sufferer, whom the Law, if possible, should save from any Loss. But in Cases where the Offender has not been a Gainer, and no Person a Loser, of Property, the Offender can hardly be called a Debtor to any one, and the Punishment in lieu of Fine not levied by Process of Law before his Release from Imprisonment ought to suffice the Courts; for otherwise, without any Necessity of restoring Property to a Sufferer, an Offender after his Release till the Time expires during which his whole Profits from his lawful Calling are liable to be seized by a Court of Justice for an Offence for which he has already suffered severely will rather become an Idler, and a Nuisance to Society; than exert himself in a respectable Manner, not to benefit himself, but to satisfy a Sentence of a Court which he may look upon as harsh.

CHAPTER III.

General Exceptions.

Clause 68. It does not appear that the administering a Substance of intoxicating Quality to a Person against his Will and without his Knowledge is made an Offence; yet a Person in a State of Intoxication so caused by another for no malicious Purpose might commit Homicide. The Murderer under this Clause would not have committed an Offence, and the Party administering the intoxicating Matter would also be beyond the Law; and what would the Homicide be?

Clause 75. The Use of the Words in this Clause would seem to imply that "a public Servant is legally competent to commit an Offence."

CHAPTER IV.

Abetment.

Clause 93. The Backers of Two Men who in a sudden Quarrel fight with Fists, or the Seconds of Two Prize Fighters, are they within the Clause? By Clause 69 it would seem doubtful whether the Principals were committing an Offence.

CHAPTER VII.

Of Offences against the Public Tranquillity.

Clause 136. The Provisions of this Clause seem to be objectionable, as they give a Handle to any evil-disposed Person to create a Riot on any Pretence of Provocation received from another, and the Law, while it punishes the Person whose Provocation has given rise to the Riot, must in a proportionable Degree make Allowances to the Rioter for the Provocation he has received. The Person giving Provocation had better be left to the Punishment provided for his Offence by other Parts of the Law.

CHAPTER VIII.

Of the Abuse of the Powers of Public Servants.

The Expediency of the Clauses in this Chapter will greatly depend on the Law of Procedure. If every public Servant may be drawn before any Court of Justice at the Complaint of every Individual, several of the Clauses will be highly objectionable.

Clause 141. By the Illustration (a) annexed to this Clause, a Judge with a corrupt Motive hiring a House for a Sum far below its Value of a Person whom he knows will soon be a Party in a Case coming into the said Judge's Court, but which Case is not pending in the said Court at the Time the Bargain is made, would not be affected by this Clause, but his Conduct would be equally bad.

Clause 142. The Word "knows," which frequently occurs in the Code, requires a Definition. Is a Person said to "know" what he is legally bound to know, or professionally (see Clause 263) is supposed to know?

CHAPTER IX.

Of Contempts of the lawful Authority of Public Servants.

Clause 186. A Servant suffers a trifling Injury from his Master, and purposes to make legal Application against the Injury. The Master threatens to dismiss him if he does. Here the Master directly holds out a Threat of Injury for the Purpose of inducing the Servant to refrain from making legal Application. He is liable to the Punishment provided in this Clause. It may act very harshly.

CHAPTER XI.

Of Offences relating to the Revenue.

By this Clause a Person who merely puts a rough Mark with Charcoal or other Material on a Piece of Cloth (not an uncommon Way practised for the Purpose of evading the Duty) would be liable to the severe Punishment of not less than One Year's Imprisonment. Frequent Cases of this Kind were tried by the Courts of Circuit as Forgeries till by the Orders of Foujdarry Adawlut dated 8th May 1815 they were excluded from that Class of Offences, and the Punishment with Fine, or in fail thereof Imprisonment not exceeding Three Months, by the Magistrates, was considered sufficient. The Punishment provided in Clause 222 might embrace this Kind of Counterfeit. By Clause 217 and some of the following it seems, however, that the Word "Stamp" is meant to represent the Instrument by which the stamped Work is made; but that it is not used so throughout the Chapter is evident from the Use of it in Clauses 223 and 224, and cannot, therefore, be taken only in that Sense.

Clause 217.

CHAPTER XIII.

Of Offences relating to Weights and Measures.

By this Clause a Person is liable to Punishment who "fraudulently uses any Balance which he knows to be false;" but no Punishment is assigned for fraudulently using any true Balance. In Indian Country Towns and Villages there are perhaps but few correct *Balances*. The Buyer and Seller are both aware of their being false, and will be generally careful to see the proper Corrections made in them before the Goods are weighed; but in large Towns, such as the Presidencies, where the Balances are kept correct, a fraudulent Use of them is easier, but would escape Punishment.

Clause 253.

CHAPTER XIV.

Of Offences affecting the Public Health, Safety, and Convenience.

The Punishment for this Offence is severe, but it will be rendered void by the "Belief" of the Offender being in his Favour. The Natives are particularly careless with Fire; but, like most other People, they never believe an Accident will occur till it does occur. It has been safe enough hitherto, and why not now?

Clause 269.

Would a Gentleman who leaves his Gun loaded in his Room be subject to this Punishment?

Clause 270.

CHAPTER XV.

Of Offences relating to Religion and Caste.

The making a Law on this Head seems to be very objectionable. The special legislating on the Subject is likely to create the Offences enacted in the Code. They have hitherto been left untouched, and it is a desirable Object that they should be so left. The Clauses, as far as is requisite, might be included in the other Provisions of the Code without defining them as Religious, and Caste Offences. The Prejudices of Caste are supposed to be gradually wearing down, and special Enactments regarding them will only tend to check the desirable End that they should be wholly abandoned. The Provisions of Clause 283, as now worded, would subject to Punishment the Members of some Churches and Religions for exercising the Discipline of their Churches in certain Cases on an Offender. The former Part of Clause 284 might well be classed under the Provisions of Clause 348. The other Part, "the introducing a Person to do ignorantly anything whereby that Person incurs Loss of Caste," should not be confined to Caste alone. If it is necessary to have the Provision at all, it may with Advantage be made a general Provision to meet all Acts of wanton or malicious Hurt to a Person's Feelings or Character. The Christian has as much Right to Protection under this Clause as the Mahomedan or Brahmin, though he could not claim it, as he does not profess to hold "Caste." As an Illustration to show that a Christian may be just as much hurt as a Brahmin: Z. is a Member of a Temperance Society, and pledged not to drink ardent Spirits. A., with the Intention of causing Z. to forfeit his Pledge, mixes Brandy with Z.'s drink. By Clause 284 A. has committed no Offence. Again, Beef Broth is, perhaps, an Abomination to a Brahmin; not so Cow's Urine; yet if A., a Christian, were to mix Beef Broth with B., a Brahmin's Food, he would commit an Offence severely punishable; while, if B. were to mix Cow's Urine with A.'s Food he would commit no Offence, because A. has no "Caste." The Provisions of this Chapter had better be immersed in the several general Provisions of the Code. But if the Chapter is to be retained a Definition of the Word "Caste," and a Specification of the Acts which incur a "Loss of Caste," is absolutely required, for they are most undefined,—far more so, perhaps, than the Word "Honour."

CHAPTER XVI.

Of illegal Entrance into and Residence in the Territories of the East India Company.

A Time should be limited for the Person to enter his Name in Writing.

Clause 287.

CHAPTER XVIII.

Of Offences affecting the Human Body.

Clause 298. By the Definition of voluntary culpable Homicide by Consent it might in most Cases of Suttee be shown that the Persons engaged in it were guilty, not of this Offence, but of the Offence of Murder. Is that contemplated?

Do the Provisions in this Chapter include Cases of Self-Destruction or Self-Hurt? By Clause 399, in next Chapter, it is said a Person may commit a *Mischief* against himself.

CHAPTER XIX.

Of Offences against Property.

Clauses 364 and 369.

Why should the Punishment for Theft be confined to *rigorous* Imprisonment, while Offence of Extortion is punishable with Imprisonment of *either Description*?

Clause 392.

A few Illustrations of Cheating in Horse and other Cattle Dealing would be a useful Addition to the Illustrations already given in this Clause.

Clause 412.

The Punishment for Stack-burning, the Value of the Stack being below 100 Rupees, would only be Six Months Imprisonment, or Fine, or both (see Clause 402), which Punishment seems too lenient for so malicious an Offence, so easily perpetrated without Detection.

2d. The Code has been lent for the Perusal of Individuals, in order that any Suggestion they may have to offer for its Improvement may be made, which shall be submitted to the Provincial Court of Circuit when received.

Given under my Hand and Seal, this 10th Day of August 1838.

(Signed) C. PELLY,

(L.S.)

Acting Joint Magistrate.

The Joint Magistrate of South Arcot has the Honour to acknowledge the Receipt of the within Precept, calling for such Remarks as he may have to make on the Subject of the Penal Code.

The Joint Magistrate has perused the Code with much Attention, and has but few Observations to offer, except to record his high Opinion of the Wisdom of its Provisions, and of the humane and enlightened Principles on which it is founded. He begs however to remark on a few Points which have attracted his Attention during the Perusal of the Code, and which appear susceptible of Modification.

Clause 12. The Definition of a Judge as here given will not apply to a Magistrate, nor indeed to a Criminal Judge, who is investigating a Case which he has not Power to settle definitely, but must commit to a superior Tribunal. By the next Clause a Court of Justice consists of One or more *Judges*. Hence, under Clause 197, Contempt of Court will not be punishable if the Investigation which the Magistrate or Criminal Judge is at the Time conducting be on a Subject which must ultimately be tried before a higher Court. It may also be a Question whether a Magistrate or Criminal Judge trying a *committable* Case would be liable to the Penalties of Clauses 141, 142, 143, in the event of his being guilty of any of the Offences therein specified.

Clause 14. There are several Classes of Persons employed in the various Departments of the Government of the Country who would not fall under any of the Definitions of public Servants; e.g., Javobnesses or Gomashahs in the Office of a Collector, Magistrate, or Judge, who take down Evidence in Civil and Criminal Cases, read Reports, write Takeeds in reply, &c., are not public Servants according to the Definitions contained in this Clause, and would not be affected by the Provisions of Clause 138, though it is to be feared Instances are not uncommon in which Persons of this Description have levied Contributions upon the Ryots, under Pretence of furthering the Objects of their Petitions with the Magistrate, Collector, or Judge. An Instance has recently occurred in the Auxiliary Court of this Station in which the Criminal Javobnovess received Bribes to a large Amount from a Prosecutor in a Criminal Case; yet this Man would not be punishable under Clause 138, and the Punishment under 139, even were this Clause exactly applicable, would be far from adequate to the heinous Nature of the Offence.

Clauses 152, 153, 155, 156, and 157. The Punishment provided in these Clauses may be very inadequate, if the Matter on which a Party be cited to give Testimony be of great Importance, either to the Public generally, or to either of the Parties in the Suit. In a Criminal Prosecution for Murder, A., a most material Witness, wilfully neglects to appear on his Subpoena. B., the Murderer, is in consequence acquitted, and turned loose upon Society. One Month's Imprisonment would hardly be sufficient Punishment for A. Again, in a Civil Suit in which Laes of Rupees are depending, A. refuses to attend the Court or produce his Books, and the Suit is lost in consequence. To fine A. 500 Rupees, while the Party profiting by his Absence may have given him a Bribe of double or treble that Sum to ensure it, would evidently be nugatory. A Party attending, but refusing to swear, or give Evidence when sworn, is liable to Six Months Imprisonment or unlimited Fine; but between this and not coming at all there is no practical Difference.

The

The Joint Magistrate would therefore suggest that the Time of Imprisonment for the Offences specified in 152, 153, 155, 156, 157 be increased, and the Fine be unlimited, on the Principles set forth in the Note on the Chapter of Punishment.

201 and following Clauses. No Provision is here made for the Escape of a Prisoner from the Custody of the Magistrate, during a Criminal Investigation, on his Way to the Magistrate, or from the Magistrate to the Court, or from the Gaol of the Criminal Court before Trial by the Circuit Judge. It will be borne in mind that a Magistrate or Criminal Judge trying a committable Case is not a Court of Justice.

212 and 213. Simple Imprisonment inflicted on Parties likely to commit this Offence would in most Cases be no Punishment at all. The Joint Magistrate would propose Imprisonment of either Description.

263. The Punishment herein provided seems far too little for an Offence which may be followed with such serious Consequences.

410. Here, too, the Punishment is scarcely severe enough for an Act which may involve the Loss of a Vessel and all on board her.

Having thus commented on a few of the Provisions of this Code, the Joint Magistrate begs to add a few Remarks on some Subjects on which the Code is silent.

No adequate Punishment is provided by the Code for the preferring of false Complaints, though there are, perhaps, few Offences which in the present State of India more require to be repressed than this. The System of preferring false Complaints, or Complaints so exaggerated that the Mis-statements made in them greatly preponderate over the little Truth they may contain, tends greatly to impair the Administration of Justice, and is most prejudicial to the Native Character. As the Law stands there is hardly any Check to this Practice. False Charges of the petty Offences cognizable by the Magistrate under Section XXXII. and XXXIII., Regulation IX. of 1816 are by Section XXXVII. punishable with Fine not exceeding Fifty Rupees or Fifteen Days Imprisonment. But many of these Men can pay no Fine, and the Imprisonment has been ruled by the Foujdarry Adawlut to be *without Labour*, which it is well known is in most Cases no Punishment at all. In all other Cases under the Cognizance of a Magistrate the malicious Complainant is liable to no Penalty. He may charge a Man with having counterfeit Coin or smuggled Goods in his Possession, have his Person and House searched, and subject him otherwise to much Annoyance and Inconvenience, yet for this he is liable to no Punishment. The Parties injured may, it is true, sue him in the Civil Court; but if, as is most probable, he be a Beggar, such a Prosecution would only expose the Plaintiff to additional Expense and Trouble. That admirable Regulation IX. of 1832 is well adapted to repress the Offence now under Discussion; but unfortunately the Power which it confers is confined only to Heads or Amins of Police, and does not extend to Magistrates, or even to Complaints referred by them to Native Officers of Police for Investigation. In Note G. Page 14 the Framers of the Penal Code express their Conviction, "that the Law on the Subject of false Evidence will render unnecessary any Law for punishing the frivolous or vexatious preferring of Criminal Charges." This Law is, that a Person giving or fabricating false Evidence is punishable with Imprisonment of either Description for a Term which may extend to Seven and must *not be less than One Year*, and shall *also* be liable to Fine. Not to mention that the lowest Rate of Penalty here given may in many Cases be too high, it is to be remarked that this giving of false Evidence, as it must be on Oath (Clause 188), is in fact tantamount to Perjury. But the Difficulties which beset a Charge of Perjury, and render it more difficult to substantiate than almost any other Accusation, are well known to all Magistrates, Criminal Judges, and Circuit Judges. To this it is to be added, that a Prosecution of this Nature presupposes the Party to have been in the first instance sworn to the Truth of his original Statement. But Petitions are constantly presented to a Magistrate which at the First Glance he knows either to be false altogether, or that at least Three Parts out of Four are untrue. A Native who presents a Petition will always swear to its Truth. But the Practice of the Magistrate swearing a Man to that which he feels a full Conviction to be false, in order to have the Means of punishing him afterwards, is objectionable, and not likely to augment the little Reverence at which Oaths are at present held by the lower Orders of the Natives. Many Instances also occur in which, though a Complaint may have been notoriously groundless and malicious, it will be impossible to bring the Author of it within the Scope of an Indictment for Perjury or false Evidence. To remedy this, the Joint Magistrate would propose that some Provision similar to Regulation IX. of 1832 be introduced into the Code. One more equitable cannot easily be framed. The Infliction of Punishment is vested in a different Tribunal from that originally trying the false Charge, and which cannot be biassed by any of the former Proceedings. The Party originally accused and the Witnesses are not subjected to a Journey to the Court; but it is for the Judge, on a full Review of all the Proceedings, and of any additional Explanation which the Accused may have to offer, to judge of the Truth of the alleged false Complaint, and of the Temper and Intention with which it has been preferred.

No Power is given by the Provisions of this Code to Magistrates to hold to Security, or commit to Prison for a limited Time in default, Vagrants, suspicious Persons, or Vagabonds wandering about the Country without ostensible Means of supporting themselves, and subsisting in fact by petty Pilferings. Although the Exercise of this Power requires

to be strictly watched and controlled, yet in the present State of India it can hardly be dispensed with without impairing the Efficiency of the Police. Even in England a similar Power is granted to Justices of the Peace, and its Exercise is not uncommon, especially in those vested with the Care of the Police in large Towns. When the Number of those who roam about this Country without any honest Object, and ready to lend themselves to any Roguery, be taken into consideration, some Plan for their Coercion or Suppression will not be deemed unnecessary.

It were perhaps premature to make any Observations on the Code of Procedure, to which Allusion is frequently made in the Penal Code. The Joint Magistrate, however, cannot avoid expressing his Hope that One distinguishing Feature in that Code may be the enlarged Powers given to Magistrates and Native Heads of Police. In the present State of the Law, a Head of Police or Ameen can only punish in Cases of Theft under Five Rupees, or Assaults, Affrays, &c., when a Fine of Three Rupees would be a sufficient Penalty. In all Cases of a more serious Description the Inquiry must be conducted before the Magistrate, the Complainant and Witnesses having sometimes to travel Fifty or Sixty Miles to the Cutcherry, and after a Week's Detention return the same Distance to their Villages; yet a Head of Police who may not dispose of a Case of Theft where the stolen Property be worth Six Rupees is allowed to prepare for the Criminal Court Cases of Murder, Gang Robbery, or other serious Description, and on the Manner in which these are got up in the Talook in the first instance their ultimate Disposal by the Criminal or Circuit Court in no inconsiderable Degree depends. To make the Incongruity more striking, many of the Cases sent up by a Tehseeldar are eventually tried by a Sudder Ameen; yet Sudder Ameens and Tehseeldars are Men raised from the same Ranks of Life, and fully as much Activity, Energy, and Ability are required in the latter as in the former Situation. The Powers given by the present Law to the Magistrate are contracted in the same inconsistent Manner. He can only punish petty Assault in Thefts under Twenty Rupees; but he may imprison for Six Months for having counterfeit Coin without good Excuse, and award 100 Rupees Fine, or Three Months Imprisonment with hard Labour, (when the Customs are rented,) to Parties detected in Smuggling. To remedy this,—to lighten the Business of the Courts, and spare the People the Trouble and Expense of attending them,—the Joint Magistrate would propose to invest the Magistrate with Power to punish in all Cases where Six Months Imprisonment should be an adequate Penalty. Cases wherein Two Months Imprisonment would suffice should be cognizable by the Tehseeldar, who might of his own Authority inflict Fifteen Days Imprisonment, or if he thought a severer Punishment required, forward his Proceedings (but not the Prosecutor or Witnesses) to the Magistrate, explaining at the same Time the additional Extent of Punishment which he would propose to inflict. If the Magistrate, on Perusal of the Proceedings before the Police, and after hearing any further Defence which the Accused might have to offer, should deem the Charge proved, and the extra Punishment suggested by the Head of Police merited, he should be empowered to inflict the same, or, if he consider further Evidence necessary, should examine such Testimony, and decide accordingly. When a heavier Punishment than Two Months Imprisonment might appear called for, the Magistrate should be bound to hold a personal Investigation of the Case, after which Imprisonment to the Extent of Six Months might be awarded. Cases which would seem to demand a greater Degree of Punishment should of course be committed to the higher Court.

Given under my Hand and the Seal of the Joint Magistrate at Cuddalore, this 3d Day of December in the Year of our Lord 1838.

(Signed) J. PYCROFT.
Joint Magistrate.

Enclosure 7 in No. 75.

(No. 55.)

J. VAUGHAN Esq. to the REGISTER of the COURT of FOUJDAREE ADJAWLUT,
Fort St. George,

Sir,

Tellicherry, 12th October 1839.

I HAVE the Honour to submit some Observations on the Code framed by the Law Commission. I regret that many other Circumstances have deterred me from offering them sooner.

2. With reference to Mr. Secretary Macnaghten's Letter of the 13th April 1838, I confine myself to Comments on a limited Portion, which I deem preferable to a Statement of all which appears to me objectionable, inasmuch as that if Remarks that I may make should be deemed of sufficient Importance, I can offer more on further Requisition. Time and Labour will thus be saved to the Writer and Readers.

3. While I heartily hail much that is useful in the Provisions of the Code, and the Excellence of many Views expressed in the Notes, I must declare that many of the Illustrations appear to be very far-fetched, and to exhibit Cases not likely to occur or to be found; and I cannot concur in the Opinion expressed in the last Paragraph of the introductory Letter, that (what the Commission admit to be) the "rugged Phraseology," which depends much on Punctuation, is likely to be so expressed in the Native Languages

ganges as to be made intelligible to the Native Population, or even to a very small Portion of it; and as they do admit "that a Law, and especially a Penal Law, which should be drawn in Words which convey no Meaning to the People who are to obey it is an Evil," I see not how this Code can be passed without great Alterations, even in regard to its Expressions.

4. The Commission say that their "Illustrations exhibit the Law in full Action, and show what its Effects will be on the Events of *common Life*;" but they do not appear to be borne out in this, when we refer to many of those on Articles *20, 21, 72, 73, 230 (Items (c.) &c., especially), 308 (a), 363, 393, and (a) of 404, which seem calculated for Europeans only. Those suitable to all Classes should be given; and Europeans may be referred to an Appendix for such as apply to them only. Those above noticed, and many others, are certainly not likely to lead their Minds "through the same Steps by which the Minds of those who framed the Law proceeded," for they cannot follow without Illustration on Illustration.

* The selection of these few is made casually.

5. The Desire for the brief and comprehensive appears to have led to great Sacrifice of Perspicuity and the Means of ready Reference, as well as to the clubbing of great with small Offences under One Provision of Punishment. I cannot but think that it would be better to extend the List of Clauses, and use plainer Words and Phrases (as simple as possible) for the Benefit of both those whom they are to affect and those who are to administer them. Since Illustrations are deemed necessary, why not give them abundantly for each Clause?

8. Clauses 304 and 305 (from a Page on which I have just opened) exemplify what I have said in the Beginning of the last Paragraph. If a Man were brought up for an Attempt at Rape which had caused the Death of the Female, who would think of turning to these Clauses, if he did not bear the Illustration in the latter in Recollection? And as the Commission do not profess to bring every possible Case under View, it is only by Chance that this appears. On reading 304, would he look on an Attempt to ravish as "so rash or negligent an Act as to indicate a Want of due Regard for Human Life?" If the Violence was great, would not the Offender have "the Knowledge that he was likely to cause Death," and consequently be liable for Murder under 294, 295, and 300? I must say I cannot conceive what Cause of Death, whether Violence or Fright, from the Attempt at Rape, is contemplated in 304.

7. Would it not be better to make a few more Clauses under the Head of "Rape," to which all may turn and readily read? For instance,—

359. A Man is said to commit "Rape" who has sexual Intercourse with any Woman (except his Wife) under Circumstances of the following Descriptions:—

(Here enter)

360. The Punishment for Rape is rigorous Imprisonment for _____ Years and Fine.

361. The Attempt to commit Rape is punishable by rigorous Imprisonment for _____ Years and Fine.

362. If Death is caused from Fright, Violence, or otherwise, by the Perpetration of Rape, or the Attempt to commit it, the Punishment is Death, or rigorous Imprisonment for _____ Years, Flogging, and Fine.

363. Persons who aid and abet the Commission of Rape are punishable with the same Punishment as the Principals.

And so on with any more that may appear necessary.

8. With respect to the most serious Offences in Chapter 18 also, one would think that it would be easy to place a Description of the various Homicides which amount to Murder and those to Manslaughter, &c., and then to add "Homicide amounting to Murder is punishable with Death," "Manslaughter, with rigorous Imprisonment for _____ Years and Fine," and so on. Who has ever heard of such a Case as that in Illustration (b) of 294, or that of (c)? and who would think of them in reading that Clause? Really a Man must take care when he visits the sick, and eschew talking of Suicide, if he should have a Turn for it. How can he know that by his saying to his Friend or Acquaintance who has the Toothache or Gout, "I would sooner blow my Brains out than suffer such Pain as you do" (an Expression which a Man may carelessly use), that his Friend would be so rash as to do so? How can he be said to "give him his Choice?" And what Intervention of Time between the Speech and the Act would suffice to save him from Punishment? How is it likely to be proved that it was his *Intention* to make him commit Suicide? Appearances would be against such Intention, as only Friends (or those professing and believed to be so) are generally admitted to visit the sick. This holds good to the Case (b) also. The "agitating Tidings" may be that the Prize of a Lakh of Rupees in the Lottery had fallen to his Uncle, whose Heir he may be, who had had Two Apoplectic Fits? A Third, in his Joy at hearing this, may carry him off. Is a *malus Animus* to be inferred from the Circumstance that he is the Heir? Can it be necessary for Legislators to provide for such Cases, rare of Occurrence, I presume, even if indeed they have been known to have occurred, and so difficult of proof? Referring to the numerous English and Indian Case Books, &c., surely a sufficient Catalogue of possible Cases may be made out (to which others may be added, as new Cases occur); and whatever its Length may be, I would venture to affirm that if it were

in plain Terms it would be much more quickly translated and understood and applied than this Code. The Expense of the Addition of the Paper and Printing should be of no Consideration in comparison with the Object of having the Law made clear to all.

9. It is needless to point out other Cases of Obscurity, as they must be obvious to any one who has read the Code with common Attention. The Commission indeed compare the Study of it to that of Geometry, in which "it is constantly found that a Theorem read by itself conveys no distinct Meaning;" and this is just what I confess I have felt. The Natives are likely to feel it more. I would submit that this is not the Way to teach the Law, which should be rendered as easily intelligible as possible.

10. I would notice next the great Latitude of Punishment prescribed for Offences. And here again no better Instance can be found than that for Rape, in Clause 360.

11. Where are we to look for the Distinctions in Rape whereon to graduate the Measure of Punishment from Two Years of *simple* Imprisonment *without* Fine to Fourteen of rigorous with Fine unlimited, which this Clause prescribes? And this is a Crime which Sir Matthew Hale wrote "ought severely and *impartially* to be punished with Death." Is Female Chastity now held so cheap that the Ravisher of it may suffer less than for simple Theft, as this Code allows.

12. The next Two Clauses, regarding disgusting Offences, give as wide a Range (One indeed wider) for the Fancies of a Judge as to Degrees of Culpability, when there ought to be but One Punishment for all who commit them, and that a severe one. What Shades of Guilt can there be? What Plea for Leniency, but Youth, or the half-barbarous Condition of the Offender, on which, or on any other particular Circumstance, an Application for Remission of Part of a *prescribed* Sentence may be granted? To which Side is the Mercy which the Code allows to be dealt? To the low and ignorant, or to the pampered of better Days? Surely not to the latter, who has had the Means to read and hear of the general Abhorrence of such Acts.

* Clauses 1. and 5.,
Sec. 3., Reg. 6.,
1822, and Sec. 9.,
Reg. 1., 1825.

13. Though the Madras Regulations are spoken of with Contempt, I think they (imperfect as they certainly are) will stand Comparison with the Code, when we view their Distinctions * as to the various Grades of Aggravation of Theft, and Clauses 364 and 367 of the Code. I cannot perceive the Grounds on which the Minimum of Punishment is fixed in 365; or why, if Servants or Persons residing in a House only rob it, the Offence is less than if "a Person not residing or employed in the Building is engaged in Conspiracy" with One of them. By this Clause it would appear a Servant handing out a Seer or Two of Rice to his Wife or kept Woman, who is not employed or residing in the Building, when he may be called to do any Work in a Storeroom, must be subjected to rigorous Imprisonment for Six Months, and his Half Dozen of Children will be half starved in the meantime. Would not a slight Whipping on the Posteriors be more suitable and beneficial?

14. There are very many extraordinary Cases of Intentions in the Code which appear next to impossible to prove. For instance we may take Illustration (e) of 363. Let any One divine how "the Intention fraudulently to take a Dog" is to be proved, though a Man be found with something that Dogs particularly fancy in his Pocket. If he openly coaxes it, so that Witnesses may depose to the Fact, why notice the Contents of the Pocket? Who shall determine the Intention illustrated in (o.)

15. And what shall be said of contemplating such Cases as Illustrations (p) and (q) of the same Clause under the Head of "Theft" and the Declaration that the last is actually Theft? The First is an obviously mischievous Trespass, for Punishment of which Provision should be made. The other might be done for a Joke; but the Joker would find himself nailed under the Code for Theft. If such a Case should occur, would it not be sufficient to leave the injured to file a Civil Suit, on Refusal of the Offender to make Reparation? A Boy may be stamped as a Thief, according to (c) and (q), for having coaxed away a Dog to worry a Cat, a Jackal, or any other Animal. So may one who takes a Cock a few Yards to set it to fight another. The Intention to appropriate to one's own Use the Goods of another is the Essence of Theft.

16. Would it not be better to enter all such Cases under "Trespasses," for which Fine (commutable to Imprisonment or Whipping suitable to Youth) should be levied, and Remuneration made to the Aggrieved, if deemed necessary?

17. Instances of unduly severe Punishment are, I think, abundant in the Code. I have just opened at Page 84, and find an Instance in Clause 325 by which a Man is made liable to *rigorous* Imprisonment for a Month and Fine of 500 Rupees for simple Hurt (even for merely striking one with his Fist or a Stick) on *grave* and *sudden* Provocation. For the Definition of this we are referred to Clause 297, but I think it can hardly be said to be *defined* there; for "Person of ordinary Temper" is very indefinite, as indeed the Commission in the last Paragraph of Page 59 of the Notes would seem to show, when they talk of "gross Insults by Word or Gesture," and express an Opinion that these are entitled to Consideration, as well as Excitement from bodily Pain. But the Code appears to have great Doubt as to Provocation. Now if a Hindoo or Mussulman having a Stick in his Hand strikes One who grossly insults him on passing close by, is the above-noticed a fair Punishment? If he should break the First Offender's Arm by the Blow, while the other, seeing him about to strike in consequence of the Insult, stands prepared with another Stick to resist him, and has probably insulted him with a view to induce him to strike, he is liable, under 326, to *rigorous* Imprisonment

Imprisonment for a Year, and Fine of 2,000 Rupees. No. 327 would appear to embrace the Punishment of a Youth firing off a Cracker which startles a Horse, and causes a severe Fall to his Rider, or One who starts a Bullock with painted Horns, which upsets a Man, on Pongal Day, equally with the Person who may ride a vicious Horse into a Crowd, and cause it to break the Legs of Two or Three Persons, and bite others. The Offences are widely different, and the Punishments should be distinctly provided.

18. Under 330 (with the Explanation) and 331 it would appear that a Man may be sentenced to *rigorous* Imprisonment for a Month and a Fine of 500 Rupees for saying, "You had better not go that Way; it is dangerous. I saw a Tiger there an Hour ago." Is it necessary to legislate for such Cases? If they are not contemplated, why make such comprehensive Definitions as can be twisted into Instruments for *ailing* Men's Liberty, and yet keep the Complainant free of Punishment. The Man may have told the Truth. Who is to prove that he did not? Is he to be punished if he cannot prove it? Punishment may be provided for any one threatening to set a Dog at another, without requiring Proof as to its being savage. The Illustrations (c) and (d) do not mitigate the Force of the Provision of the Clause. A Report that Robbers are on the Road, or Pindarries are coming, "makes it appear that it is dangerous to proceed."

19. Why not distinctly state Offences, and Punishments in proportion to each? For instance, "He that restrains a Man by threatening to assault him, or cause him to be injured if he proceeds, shall be punished with," &c. He that wilfully spreads "a false Report for any Purpose apparently mischievous shall be punished with," &c. If "such a Report tend to excite general or considerable Dismay of the Inhabitants of the Town, Village, or Place where it may be set forth, or be apparently to raise or depress Prices of any Commodities, the Offence is aggravated, and shall be punished with," &c.; and so on. Spreading false News is a very common and mischievous Thing, and Punishment should be provided for it.

20. Though the Illustrations are so frequently of microscopic Penetration there appears to be great Want of them in many Clauses. For instance, in criminal Breach of Trust (386) there is nothing shown as to whether Servants fraudulently allowing their Master's Horses or choice Dogs to be used for breeding, and many other Offences of like Nature, (which would appear to be a "Violation of Contract implied,") can be punished under that and the following Clause. Such Abuse of a Horse may be a serious Injury of very valuable Property. These and other Matters between Master and Servant claim serious Attention in framing a Code for all Classes, and yet there are but Three Clauses on Contracts of Service.

21. The last Paragraph in Page 88 of the Notes appear far from satisfactory. "When a Dip of Ink," or stepping into a Coach, have a Place, shall the great Mass of European Residents obliged to travel far (to serve the Government), and by regular Stages, on short Notice, and with small Means, be left without Protection (while Acts of Parliament and Orders of the Court of Directors provide so much against ill Treatment of the Natives), because Men who have lived almost entirely at Presidencies, and had Command of large Establishments (in which it is not a serious Matter to lose the Place of One of the Idlers), have had no Opportunity of feeling Distress from Breach of Contracts. They can feel for a Person travelling Post (the only Mode probably in which they have ever travelled or are likely to travel) who may be set down by his Bearers, but not for an Officer who has a Family to move, or who from Insolence or Drunkenness of Servants may be left between Two Stations to saddle and clean his own Horse and make his own Dinner, or put up with such Fare as in his particular State of Health may materially affect his Life. "The existing State of the Market" for Servants was perhaps judged of from Calcutta. If an Officer is ordered to the Field, and Servants who on entering his Service engaged to go anywhere desert him, should they not be subjected to Fine or rigorous Imprisonment? I say "an Officer;" but the Servants of every One, Native or European, who so engage should be punished. If it were easy to get others, who would wish to take the unwilling and perhaps ungrateful? But even at a Station Punishment is necessary to restrain Servants from leaving Service without due Warning, Drunkenness, &c.; and these may be framed without "giving Means of Oppression to bad Masters." Let equal Justice be administered to both.

Clause 73.

22. But in regard to Service, the Attempt to annul the Master's Right over his Slaves claims particular Notice. The Commission confess* that they "entered on the Consideration of this important Question with a strong Leaning to the Opinion that no Distinction should be made as to Offences (?) committed against Slaves." The Mahomedan Law which we have recognized, and which I conceive is as binding on us as the Sanction to Slavery in the West Indies was, does not consider moderate Chastisement as an "Offence." What the Regulations may be on which the Allahabad Court formed their Opinion, which the Commission recommend for Adoption, I know not. The Madras Foujdaree Adawlut on the 27th November 1820 published Sanction for moderate Correction, upon the Opinion of their Law Officers; and no subsequent Regulation or discovered Item of Mahomedan Law appear to annul it. Our Criminal Code declares Offences denounced by Mahomedan Law or the Regulations to be punishable by the Criminal and Circuit Courts; and Section 32, Regulation 9, 1816, intended to relieve the Courts of the least of these Offences, can hardly be deemed to

* p. 22.

give the Magistrates Authority to punish Masters for that slight Chastisement which does not constitute an "Offence" before the Courts.

23. Let the Magistrate of Malabar and others show the Cases in which Complaints have been made by Slaves against their Masters on account of moderate Correction having been administered, and a correct Judgment may then be made as to the "Practice," in which no Distinctions have been made. Cases which come before the Foujdaree Adawlut are of course too grave to admit of any Distinction. Let Proprietors be heard in defence of their Rights, before you virtually annul their Property. Would it be becoming in Government to act in this Way while so much has been paid for Abolition in the West Indies? If we annul Rights in one Kind of Property, what Confidence will there be that others will not be assailed.

24. It would be mocking (as indeed the Commission show) to tell Proprietors to sue in the Civil Courts, where their Suits would not be decided for Months, if not Years; and when Judgment was given in their Favour, whence would come the Remuneration for Service lost? The Master may be a ruined Man before the Decree be passed. His Cultivators having been tempted away from him (though he may have treated them well, others may bid higher); his Fields have lain waste, and his Property and Land have been sold for Arrears of Revenue. The Man with the longest Purse may thus outlive and ruin his Neighbours, and buy up their Land when it is sold for Arrears which he has caused.

25. I will now refer to the Chapter on Punishments, and the Notes thereon. In this I would submit that Flogging be added to the List in Article 40. A Reference to the Punishments which I have inflicted during about Twelve Years as an Assistant Magistrate, Four as a Criminal Judge, and Ten as a Circuit Judge, and what I have written against Flogging, would suffice to show that I am no Advocate for much of it; but I am of opinion that it is a Punishment much feared, and highly desirable to be retained for most if not all of the Offences to which it is now applicable by our Regulations, and especially for the Correction of those guilty of repeated Offences of Theft, for Repetition of Robbery, for Robbery aggravated by Torture, for vicious Wounding, Arson, and Rape. Prisoners often beg to be excused the Flogging, while they say not a Word about Fourteen Years Imprisonment. Whenever it may be proved that the forthcoming System of Prison Discipline produces such Terror as greatly to diminish Crime, Flogging should certainly be discontinued. Hardly any one would then wish to maintain it. But until we have that Proof (I despair of it) I must submit that Flogging should have its Place among Punishments, while the controlling Authorities should take care that it is not too freely applied.

26. I am also strongly disposed for the Maintenance of Tusheer, or the Substitution of the Pillory. The former is applicable to Perjury and Forgery only; and as we want *Examples* to check these, and as the chief Object of Punishment is Example (the Punishment or Reform of the individual Offender being of far less Importance), I cannot at all subscribe to the Arguments of the Law Commission against it. Let the Men of "quick Sensibility," for whom they sympathize, look well to Consequences before they engage in such deliberate, *impious*, and dastardly Crimes. The Robber is led away at short Notice with Hope of Gain, and has no such Warning of the Consequences as the Forger of Deeds and the Perjurer in support of them have. The great Chances of Impunity induce the Belief that it is a safe Speculation. In the Cases of not frequent Conviction the Example should therefore be severe.

27. I doubt not that Sentences for these Offences will show that great Discretion is used as to the Application of this Punishment; that the poor *Rustic* "drawn into the Crime by Temptation" is not often exposed or punished to the full Extent; but that it is the cunning Brahmin, the hardy Dealer in Perjury and Forgery, who is exposed; and "hardened and impudent" as he may be, he surely feels the Punishment. That no Man may be taken unawares, let him be warned (as I believe People generally are) before he files a Document or begins to give a Deposition. The Crimes demand severe Punishment, and he who deliberately commits them I conceive deserves to be considered as having thrown off every Particle of Respect for his Character.

28. With regard to "the Black Water," which the Commission view as so terrible to the Natives, I believe they will find that the March of Intellect and of Troops to the Eastern Settlements has extended the Information of those of the Madras Presidency (at any Rate) on these Matters considerably. Still I believe it is more dreaded than Death by Men of high Caste; while others may hear of the Ease and Independence which (Officers who have been to the Eastward have described it to me) afford quite a Burlesque on "severe Punishment." A public Flogging, Tusheer, and Labour on Roads, operate for *Example to many*; while Transportation is merely *heard of*, reported to be not so terrible, and soon out of Mind probably with those who do hear of it.

29. The Commission anticipate Objections to Nos. 43 and 44, and I cannot conceive that these can be defended. In the first place, how many there are who would not be proud of Asiatic Blood according to Clause 32, and who would consequently be rendered liable to this Punishment. How hard they would operate against any with even a Tinge of Asiatic Blood, which ought to be sufficient to give them a Claim to Residence till Sentence of Transportation is passed by a Court. Even if an European subjects himself under 196 to a Sentence of rigorous Imprisonment for One Year, by Institution

of a petty Suit which should be clearly proved to have been filed for the Purpose of Annoyance only, or to the still more extraordinary Punishment of Two Years rigorous Imprisonment, for "Mischief" on what one "values as a Rarity," as a "Keepsake," &c. under Clause 405, can there be any Necessity to banish him from the Territories of the Company, to tear him away from Landed Property, and a Family partly of Asiatic Blood? Instead of placing such arbitrary Power in a Government, the Offences which should require the Banishment should be declared, and it should be made the Punishment by the Courts.

30. Punishment may be provided for Europeans under the Rules of rigorous Imprisonment, and Hard Labour may be enforced against them with no more Danger to Health than it is now voluntarily performed by Soldiers, Artificers, &c. As for Exposure of the European Character, one would think that the Writers had never seen those which unhappily are too frequent wherever an European Corps appears. The Natives have not such an high Opinion of red and white Faces as to suppose all who possess them to be immaculate; and I should think it is well to let them see that Justice is administered equally to all. Small European Gaols may be established at healthy European Stations, and European Attendants may be selected from steady Men not fit for active Service, to whom it would afford an extra Provision.

31. No. 45 is sufficient to provide against those Cases of Injury to Health of European Offenders which the Commission adduce as Ground for warranting the Two preceding Articles for arbitrary Commutation.

32. No. 46 should be qualified by a Declaration that the Grounds for Remission should be registered, and declared in open Court, in the Court in which Sentence was passed, that well-grounded Mercy may not be construed by the Public into a Remission through Corruption or other undue Influence.

33. No. 47, and the Clauses therein referred to, give a wide Latitude for Punishment; Years of solitary or Years of rigorous Imprisonment, for Offences under One Definition, according to the Pleasure or Nature of the Judge! The Cases in which the Imprisonment should be simple ought, I conceive, to be very few, as fining offers an Alternative for the Punishment of Offences of a lighter Description; and if the Fine be not paid it may be commuted to short rigorous Imprisonment, which may be without Exposure, and of Kinds suitable to Persons of different Conditions in Life. As Imprisonment is for Correction and Retribution, it should be irksome, so that it may affect the Offender to his Disgust in the shortest possible Period, and thus deprive his Family of his Labour for their Support as short a Time as may be needful. Very many may bear simple Imprisonment with great Coolness, and sleep through the greatest Part of it, while their Families may be suffering from the Loss of their Labour. Why should the Government pay for their Board and Lodging in Idleness. Rigorous Imprisonment keeps the Mind awake to Consequences. It would be better to sentence to Two Days of rigorous than a Week of simple. This is in accordance with the Opinion of the Commission in Page 3 of their Notes.

34. Clause 48 is calculated to puzzle in its present Shape.

35. Clause 50 requires an Addition (which I presume will be supplied in the Code of Procedure), that every Fine shall be liable to Revision by a higher Authority.

36. Here I would enter my Protest against the high Estimation of the "great and obvious Advantages of Fine," expressed by the Commission in Page 5 of their Notes. After reading the Second and Third Paragraphs of that Page, I cannot but wonder how they came to the Resolution of proposing Fines in every (?) Case, except where "a Forfeiture of all Property is necessarily Part of the Punishment."

37. Most of the "Millions utterly unable to pay a Fine of Fifty Rupees" have Claims on them for Maintenance. There are Millions whose whole Property, if sold, would not produce anything near that *Sum*; and of Criminal Offenders I presume that those whose Property exceeds it would be but a very small Fraction. A Statement of Fines imposed and of those realized in a certain Period would, I doubt not, tell against Payments very greatly. Leaders of Gangs of Robbers, and great Receivers of stolen Property, are only likely to have much among those who commit Offences against Property, but the Generality of the former are not given to hoarding. They spend freely, and enjoy themselves while they can.

38. Though compelled Labour be not "equally disagreeable to all" (what Pleasure or Labour is equal to all?) it is clear that it is disagreeable to all, and I think that it would be far more easy to fit the Proportion* and Nature of it to the Offence and the Circumstances of the Offender than a Fine, "in imposing which it is declared it is "always necessary to have as much regard to the pecuniary Circumstances of the "Offender as to the Character and Magnitude of the Offence." It is impossible, even on much Inquiry, to ascertain satisfactorily the pecuniary Circumstances; but there is no Difficulty in learning from the Witnesses who support a Conviction the previous Habits and Character of the Offender; and thereupon, and without further Delay, a sufficient Quantum of Labour of a proper Kind can be ordered to be exacted from him, or he may be merely deprived of Betel and other Luxuries, and kept in solitary Confinement. If the imprisoned be One who lives by Labour, he is paying a Fine of so much that would otherwise be applicable to the Support of his Family, and he at the same Time suffers in

* Even graduated Tables may be made for what should be "rigorous Imprisonment" for various Classes, according to their Habits and Station in Life.

in the Nature of the Labour being not of his own Choice, and in his Privations and Separation from his Family.

39. I would propose Fine commutable (*if not paid*) to private but rigorous Imprisonment, for Cases of Offence of a slight or palliable Nature committed by those not previously convicted of any, and for these only. The Fine may be limited "*not to exceed*" Two Rupees, in the Case of any living by daily Labour or as a petty Cultivator; Five Rupees, on any petty Farmer or Shopkeeper; Half a Month's Pay from any One "*receiving Wages*"; and in no Case whatever to exceed Five hundred Rupees;" drawing out the Gradation even more minutely. Offences which Zemindars and other Men of Property are likely to commit, in contempt of Authority, &c., may be distinctly stated, and the Punishment fixed in Fines to large Amount.

40. It is desirable that for petty Assaults and other trivial Offences on a First Occasion the Option of avoiding a Gaol on reasonable Terms should be allowed to all. I have known that in the trifling Cases punishable by the *Magistracy*, where Fine or Imprisonment are allowed under the present Regulations, Persons of Respectability have been sentenced to Imprisonment because it was known that such Punishment would be far more disagreeable than the utmost Fine that could be imposed. I cannot but consider it a Cruelty to force a Man to a Gaol for a First Offence of a trifling Description.

41. In all other Cases below those which demand Transportation or Death and Confiscation of Property, rigorous Imprisonment should be imposed, and Fine should be added (without reference to Means of the Offender) for Reimbursement to the Prosecutor of the Loss of Property sustained, or for Remuneration on account of Damage to his Person; and if *such* Fine be not paid, further Imprisonment to be suffered, and Recovery to be made whenever it may be possible. In awarding for Loss of Property, however, great Caution is necessary, as People are apt to exaggerate their Losses.

42. Heavy Fines, at the Discretion of the Court, should also be adjudged, for the Use of Government, in Cases of Extortion, Corruption, Forgery, and all Offences relating to Coin, Gang Robbery, considerable Thefts, and receiving stolen Property, such being Cases arising from Cupidity beyond the petty Theft which proceeds from sudden Temptation or idle Habit; this may be reformed by rigorous Imprisonment. But if you declare that he who has stolen a Trifle cannot for Six Years acquire Property for his own Use till a Fine be paid, you drive him to continue wicked and reckless. Why should Trespasses (428 to 440), or Attempts to commit Mischief (412 to 416), and many other Offences, be liable to Fine, in addition to rigorous Imprisonment? Fines for these may lead to an Impression that the Government are urged by "*Cupidity*" in assigning Fines for all Offences. What would the People say on reading that under 352 the Government gives itself a Right to take 200 Rupees from a Man for merely shaking his Fist at another, as explained in Illustration (a) of 341, or for the still more nice Case in Illustration (c), and that a Man may also have to suffer rigorous Imprisonment for a Month?

43. It is not merely the Cupidity of Men that is affected by Fines; it is a good Feeling which prompts them to prefer Hard Labour and Privations to selling for an inferior Price (as all forced Sales are likely to produce) their Cattle and every Item of the petty Articles which constitute their poor Stock, and so to be left without the Means of Subsistence for themselves and Families when the Time of Release arrives. It is against the Interests of Society that Fines should be collected by Distrainment of them, or that those who have not such Affection for their Families should have the Power of saving their own Persons by converting their Property to Payment for Release; and I should therefore suggest that in all Cases where Fines may be imposed and ordered to be levied for the Offences to which I admit that they should be applied, or such others as it may be deemed proper to add to them, Exemption should be made of sufficient Property in Tools, Implements, Cattle, Seed, &c. to admit of the Offenders carrying on an honest Maintenance, and that in Process for Recovery of Remuneration to a Prosecutor the Attachment should be taken off on Security being given for Payment by Instalments, with Interest, in a reasonable Time.

44. If a Man is liable to Fine in every Case of Conviction he will soon contrive to dispose of his Property, in spite of Provisions against it. Make what Regulations you may to prevent or annul collusive Sales, it will be most difficult to steer clear of Injustice in adjudicating on the Claims which may be set up for the Property (pretended Debt and Pledge is easily got up), and the Inquiry will bring an enormous Addition of paltry and very vexatious Duty on the Courts, which are sufficiently overburdened already.

45. Let Fine stand as a Part of the Punishment which *may* be imposed for Theft; but let it be declared that the Courts should sentence to Fines *for the Use of Government* those only who may be reputed to have made large Gains by dishonest Means. Let Claims to *their* Property be rigidly scrutinized. But as to the Mass of Offenders, I hold that general fining, and Power to levy within Six Years, is most inexpedient, cruel to their Families, and mischievous to the general Peace. Who could lay Hands on a Goat or Two which may help to sustain the Family of One who had committed One of the slightest of the Offences of the Code, and is sentenced to Fine, while he is in Imprisonment? Who would thus punish the Cupidity of him who has stolen a few Cocoa

Cut of Nine-Tails on the Posteriors, a preferable Punishment? Try short but rigorous Imprisonment or slight Whipping on those who commit petty Thefts, and are likely to reform. Let severe Flogging stand as Part of the authorized Punishment, but with a Caution that it should only be applied to those who are of notoriously idle and vicious Habits, and commit a Second Offence. Flog and transport every Leader of a Gang Robbery of any Consequence, in which Torture has been committed, and confiscate his whole Property (not merely taking a Fine); and let Persons transported be well kept to Hard Labour, according to their Sentences. All other Offences contemplated by the Code are mere Trifles in comparison with the Crime of Gang Robbery, as affecting the Peace and Welfare of the People of India. For this severe Example should be made; and public and severe Flogging is a good Introduction to Transportation, and may be exhibited, for Example, with an Announcement of the Remainder of the Sentence.

46. Our present Sentences are far too long, even if mitigated to Five Years, against Youths led away by golden Promises of easy Acquisitions, "all in One Night." Six Months (or even Three) of really rigorous Imprisonment, separate from hardened Offenders, with Release, on Security for Re-appearance to undergo further Punishment if they do not take to steady Labour on Release, would do more Good than the long Sentences to which many have been sentenced. After such Leniency, Flogging may be well applied to a Second Offence. Make the Leaders fear, and gathering of Gangs will be few. Very many engage in this Crime from Thoughtlessness, and many a simple Youth is converted into a hardy Thief or Robber by his long Residence in a Gaol.

47. I shall now (for the Reasons stated in the 2d Paragraph) draw my Remarks to a Close. I repeat that I do not believe that the Code as it stands will be made intelligible to the reading Part of the Native Population, and I therefore suggest that it should be revised and simplified, and that a Translation of a Chapter or Two should then be tried, and Opinions of Natives taken. I have conversed with One intelligent Native who has a very fair Knowledge of English (the most of any in these Districts, I believe), and who is well versed in the Regulations about it, and his Opinion is very unfavourable, and he assured me that others to whom he had read Parts of it agreed with him.

I have, &c.

(Signed) J. VAUGHAN,

1st Judge, Provincial Court, Western Division.

W. B. ANDERSON Esq. to the REGISTER to the COURT of FOUDAREE ADWALUT,
Fort Saint George.

Tellicherry, 12th December 1838.

IN submitting my Remarks on the proposed Penal Code, which I do with much Diffidence, I will begin with the Notes, and first with that (A.) on the Chapter of Punishments.

All that is said as to the Punishment of Death appears to me very forcible and just. I am quite of opinion that it should be employed only in Cases where either Murder, or the highest Offence against the State, has been committed.

Next, as regards Transportation, I should think there cannot be a Difference of Opinion that, according to the Rules already in force in the Company's Courts, it should always be for Life.

On the Subject of Imprisonment, it is impossible not to go with the Law Commission in hoping that the Labours of the Committee, now employed in investigating the System followed in the Gaols of this Country, may result in "such a Code of Prison Discipline, as, without shocking the humane Feelings of the Community, may yet be a Terror to the most hardened Wrongdoers." "Whenever such a Code," the Commissioners go on to say, "shall come into operation, we conceive that it will be advisable greatly to shorten many of the Terms of Imprisonment which we have proposed." I think so too; and further, I am of opinion that then only will it be advisable to abolish the Punishments of Flogging and of Exposure in the Mode denominated "Tusheer." In the meantime, if it be considered desirable to do so, the Courts may be expressly prohibited from employing these Punishments in the Cases of Men of mature Age and of decent Stations in Life.

Forfeiture of Property is, I think, a most proper Punishment for Persons guilty of high political Offences.

There will probably be Differences of opinion on much that is advanced in this Note on the Question of Punishment by Fine, but for my Part I confess I am not prepared to offer any very matured Opinions thereon, further than that I agree in thinking it generally a Punishment which has great Advantages, and that it could not be dispensed with, also that the Extent of the Discretion which is proposed to be left to the Courts is an Evil, though one which perhaps, for the Reasons stated in the Note, must be endured. The difficult Question, when a Fine has been imposed, what Measures shall be adopted in default of Payment, appears to me to have been ably argued by the Law Commission. I think they have clearly shown why the Imprisonment which an Offender may have undergone should not release him from the pecuniary Obligation under which he lies, and that "the Offender who has been sentenced to Fine must be considered as a Debtor,

Note A.

and as a Debtor not entitled to any particular Lenity." They have further, as it appears to me, well shown that "every Person who is injured by an Offence ought to be legally entitled to a Compensation for the Injury;" and that "every Fine imposed for an Offence ought to be expended, as far as it will go, in paying any Damages which may be due in consequence of Injury caused by that Offence."

On Notes B, C, D, E I have no Remarks.

Note F.

Note F. I cannot but express my cordial Concurrence in the Proposition "to empower the local Authorities to forbid Acts which those Authorities consider as dangerous to the public Tranquillity, Health, Safety, or Convenience, and to make it an Offence in a Person to do anything which that Person knows to be so forbidden, and which may endanger the public Tranquillity, Health, Safety, or Convenience;" it being provided, "that no Person shall be punished merely for disobeying a local Order, unless it be made to appear" (to the Court before which the Person who disobeys the Order is tried) "that the Disobedience has been attended with Evil or Risk of Evil."

Clause 182 appears well calculated to provide for such Cases; and as an Addition to the Illustrations to this Clause I beg to suggest the Case of disobeying an Order prohibiting Ballast being thrown overboard in a Harbour, Roadstead, or Navigable River.

Note G.

Note G. The whole Argument in this Note is, I think, admirable. It can hardly be doubted that the Punishments proposed for giving or fabricating false Evidence will have the best Effects; and if, as hinted in the latter Part of this Note, Punishments should hereafter be provided for false Pleading also, their Promulgation would, I am sure, be hailed as leading to the most extensive and efficient of modern Reforms in the Administration of Justice.

On Notes from H to L I have no Remark.

Note M.

Note M. I quite agree with the Law Commission in all they say as to the Propriety of extending some Indulgence to Homicide which is the Effect of Anger excited by gross Insults by Word or Gesture.

I think the Line drawn between those bodily Hurts which are serious or "grievous" and those which are slight will be found useful in practice; and that the Punishments proposed for grievous bodily Hurt, when inflicted by way of Torture, or by means of any sharp Instrument, of Fire, &c., are very proper.

Note N.

Note N. I think the Proposition to punish for "Cheating" sufficiently justified by the Reasoning in this Note.

On the remaining Notes I have no Remark.

To revert now to a few of the Clauses, I cannot but think Clause 113 (in Chapter 5) has been with Reason very generally censured.

Of Clauses 129, 130, 132, and 133 (in Chapter 7) I highly approve; as also of all the Clauses (from 152 to 187) in Chapter 9. I have the same Remark to make as to most of the Clauses in Chapter 10, particularly Clauses from 190 to 199.

Clause 364 (Chapter 19) is as follows: "Whoever commits Theft shall be punished with rigorous Punishment for a Term which may extend to Three Years or Fine, or both."

Cases of Theft are of frequent Occurrence in which it appears to me that this would be a very inadequate Punishment. I would suggest that the Limit to Imprisonment for (simple) Theft be Seven Years, and that within that Limit the Extent of Punishment be regulated (as at present under the Madras Code) by the Value of what has been stolen. I observe that in providing for the Punishment by the Queen's Courts at the Presidencies of the Crime of stealing in a Dwelling House, the Principle has been recognized*, in the Draft of an Act for extending to the Territories of the East India Company the Provisions of the Statute 1 Victoria, Chapter 85, which was read before the Legislative Council of India, and ordered to be published for general Information on the 10th September 1838, and ordered to be reconsidered at the First Meeting of that Council after the 10th November following, of drawing a Line with reference to the Amount or Value of the Property stolen.

See Clause 13.

It has occurred to me that it would be an Improvement if the Code were divided into Two Parts; one Part to include all *Crimes* and their Punishments, and the other Part to include all *Misdemeanors* and their Punishments. This would, I think, be found more convenient in practice, particularly as regards the Code of Procedure, than the present Arrangement of the Code, in which the most heinous Crimes and the most petty Offences are all thrown together.

(Signed) W. B. ANDERSON, 2d Judge.

THOMAS BOILEAU Esq. to the REGISTER to the COURT of FOUDAREE ADAWLUT,
Fort Saint George.

Sir,

12th January 1839.

THE printed Copy of the newly proposed Penal Code reached me whilst on Circuit in the Northern Circars in July last, and having been subsequently occupied in completing the Duties connected with that Tour till September immediately upon the distant Journey lately undertaken, and being now engaged in the General Half-yearly Gaol Deliveries of this Division, I respectfully observe that I have neither had nor am likely to

to secure sufficient Leisure to give the many important Subjects which it enfolds more than a superficial and hasty Deliberation, which must consequently render my Sentiments on its Merits both cursory and circumscribed.

2. The Supreme Government have manifested a serious and sincere Regard for the public Interests of the Community, by submitting this primogenial Production of the Indian Law Commission to open Scrutiny, for the sake of examining and reporting upon its Value and practical Adaptation to the general State of Society in India, and thus inviting Observations and Objections against Laws by which the People are to be governed in future, and the several Authorities guided in their Administration of it, before they become formally and finally passed.

3. With the Admission of possessing "so many intelligent public Officers in their Service," with the further Aid of their own professional legal Counsel, Men too of reputed Ability and Study, it would have been highly advantageous had their Opinions and local Knowledge been consulted during the different Stages in which this Herculean Task proceeded, without waiting for its Completion, when Omissions and Errors might have been supplied and required by the Suggestions "of experienced and judicious Persons," instead of allowing the Framers to rest satisfied with *their own* acknowledged scanty Means "of Information" in its Preparation.

4. The explanatory Letter from the Members of the Commission at the opening of the Code contains much Frankness in the Declaration of the Principles which have guided them in its Compilation. They assume that the Hindoo Criminal Law has long since given way to that of the Mahomedan, and that this in its Turn has been superseded by the British Regulations; but even these have been denounced as erroneous, from being based on no fixed Principle of Criminal Law; and, because varying in their Provisions against certain Offences in each of the Presidencies, have been discarded as Systems wholly worthless in furnishing a Groundwork for the Construction of a general Volume of Jurisprudence for the East, which was to reconcile the conflicting Rules of Jurisdiction (Criminal and Civil) for all Castes and Creeds (Native and European), whilst they have adopted only such Portions as recommended themselves to Attention (to use their own Words) "by their intrinsic Excellence."

5. For a Period of between Forty and Fifty Years have these Enactments been observed and respected. "The Prosperity of the British Territories," and "the Security of the Rights, Persons, and Property of their Subjects," have been well maintained; a Contentment in their Administration may be regarded as a most convincing Proof of Partiality to them, and further, that they have been productive of their desired Import. I am therefore of opinion that were the Differences which are so prominently stated by the Law Commissioners as existing in the several Regulations of the Three Presidencies to be reconciled, the same Crime made to be visited everywhere in our Indian Possessions with an equal Degree of Punishment, and the Offences more clearly defined than they now are in them, it would be more agreeable to the Feelings of the Natives to have them retained than the Introduction of such a confused Digest as that under Review, which they will never be made to comprehend.

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6. Socrates observed, "that before a Law is promulgated it should be well understood," and the immortal Beccaria has urged as the best Prevention of Crimes "that the Laws should be clear and simple." The Law Commissioners admit in their prefatory Letter, that these Two Principles should be always kept in view when legislating; yet they confess that "in their Definitions they have repeatedly found themselves under the "Necessity of sacrificing Neatness and Perspicuity to Precision, and of using *harsh Expressions!* because they could find none other which would convey their whole "Meaning, and no more than their whole Meaning!" How the "Native Population then are to be furnished with good Versions of it in their own Language" (p. 11.) will be the Subject of Embarrassment until all Crudities are expunged.

7. The Commissioners again remark, "in some Cases" it will be "found that the Law "is already sufficiently clear (thereby allowing that it is ambiguous in others), and that "any Misconstruction which may have taken place is to be attributed to *Weakness, Carelessness, Wrong-headedness, or Corruption* on the Part of an Individual, and is "not likely to occur again."

The Commissioners could have little studied the Character of the Persons holding judicial Situations when passing this unsparing Reflection, and the Visitation against an *unjust and disobedient Judge* (Clause 142-143.) is too hypothetical to imagine that it will be for a Moment retained. The Government possess already the Means of punishing the above Powers by any of their public Servants.

8. By introducing so many subtle Niceties and puerile Novelties into the Code, "with all the Rage of modern Improvement," the Compilers have been unmindful of One great Maxim:—"Lex non curat de minimis," Hob. 88., and too great a Precision in general characterizes the whole, by shackling Speech, repressing the Freedom of Gesture, and rendering certain Acts, Words, and Deeds Misdemeanors, under a moral Impossibility of discovering the "Intentions" to be "deliberate."

9. The best Part of the Work appears to me to consist in the elaborate Notes and Comments on its various Positions; and, like the Pursuits of Literature, its Contents form but mere Pegs to hang the Notes upon. And here I must enter my Dissent from their Advocacy for the abolition of Flogging, though it should be restricted to Persons

of bad Character, who are insensible to its Ignominy; and instead of flogging the "youthful Offender only," as proposed, I think he is the Person who should be alone spared, as the Infliction of Corporal Chastisement leaves indelible Marks through Life, whilst there are Chances of his Reform, without recourse to such Severity, which cannot be expected in an adult Offender.

10. Banishment for Life stands too conspicuous in many Parts of the Code, even for small Offences, to pass unobjected to; and Chapter 2, on Punishments, overstrides the Rest by its Rigour in this respect.

11. The Reason assigned for this is, that "it is by the *Terror*" which it inspires that it produces Good!" (Appendix, p. 2.)

It has been well remarked, "that we must not confound the Boundaries of Crimes to create a Rule of Terror! Distinction of Crime requires Attention from a Legislator; and uniform Severity cannot justify a Law, as Punishments should be founded alike on Necessity as on Justice."

12. It strikes me that the Definition attempted to be explained between "Murder" and "voluntary culpable Homicide" is much too vague to be understood and acted upon; also the intended Distinction between "instigating" and "abetting;" and too great a Nicety drawn between a "false Statement" and "false Evidence" to discover where the Difference lies, as, both being "given on Oath," either is tantamount to Perjury.

13. To meet the Requirements of the vast Society of India, Crimes should not only be completely described, but the Degrees of Punishment suitably apportioned to its several Features; but instead of preserving this Order and Arrangement the Modes of Punishment are so confused and imperfectly mixed as to render this Comparison in distributing Justice unattainable; for instead of declaring where the bad Faith lies which constitutes the Essence of the Offence, it sometimes opens a Door for a wider Breach, as with the Law of Bigamy, which expressly perverts our national Institute by punishing it according to the Extent of Injury, rather than upon the Standard of its moral Turpitude; a Doctrine most repulsive to every proper feeling, and if allowed to pass into a Law "would scarce fail to banish unfringed Decency from social Life, and to gravely imperil the Preservation of Chastity among its Members."

14. To prevent therefore the "erring Instability of an arbitrary Interpretation," of which many Clauses will now admit, every Punishment, every Penal Amercement, should be at once fixed to the particular Case, so that the Law may be observed in its *literal* and not *constructive* Sense, and nothing more be left to the Judge or Magistrate but to decide the Point whether the Offence be or not against the written Law.

15. No Choice should be afforded to the Offender to have his Sentence altered, nor the ruling Power allowed to make any Commutation ("with or without the Consent of the Offender") from the original Sentence; with Liberty, besides, to impose a severer Penalty than what was at first awarded.

16. I might point out other Cases besides that adverted to in Paragraph 10 where the Code is not in accordance with the British Law. In "unnatural Offences" Consent to the Act is no Remission of Criminality, for if *both Parties* are arrived at Years of Discretion "*agentes et consentienti gravi poena plectuntur.*" 3 Inst. 50. Again, in the Clause for causing of Miscarriage, the Woman should be described as being "*quick*" with Child, and above Four Months, to constitute the Offence of procuring Abortion; and further, the Offence of producing Miscarriage of a Woman "*not quick with Child*" should have been introduced, as Indictments are preferable on both these Counts. Nor can I altogether allow that the Rules laid down of preventive Defence of Person and Property is in precise Unison with the English Law.

17. I might also remark, that the Construction given of the covert Act so as to constitute Theft in Chapter 19, is no Law; it should be not merely moving, but the Removal of anything against the Owner's Consent, and with a felonious Intent, which amounts to "Simple Larceny."

18. The Chapter on illegal Entrance and Residence in the Company's Territories is a downright Prevention to the Resort of our Countrymen to India, and a direct Violation of and indirect Defeat of the Charter Act.

19. The new Code is entirely silent as to the Places as well as to the Description of Persons to whom it is to be made to apply, nor has any Help been furnished in rendering it easy of Reference, should it be adopted (which I very much question whether it ever will be), by a General Index and Marginal Notes.

I have, &c.

(Signed) THOS. BOILEAU,

3d Judge on Circuit, Western Provincial Court.

GEORGE BIRD Esq. to the REGISTER to the Provincial Court of Circuit, Western Division, Tellicherry.

Sir,

Zillah Court, Canara, 18th March 1839.

In compliance with the Requisition contained in your Letter of the 20th of April I have the Honour of forwarding a few Observations that have occurred to me during a Perusal of the Penal Code prepared by the Law Commissioners, and regret that the

numerous

numerous Duties that devolve upon me prevent these Observations from being in a more detailed and deliberate Shape, and which I feel the Government have a Right to expect from every one having an Opportunity of judging of the Wants and Deficiencies of our present Code of Regulations under the Madras Presidency.

The Penal Code now sent forth by the Law Commissioners would, it appears to me, be calculated to supply a good deal that is wanting, but for the nice Distinctions drawn betwixt what does constitute the Offence and what does not, added to the Discretion given to the Judge presiding as to the Amount of Punishment that may be awarded, and which must, I fear, take away much of the Good that it is intended to produce. A good deal will also depend upon its First Promulgation, and upon those who have to give it Effect; and unless considerable Care and Attention is used it will oftentimes be resorted to for the Purpose of Oppression and Malice, and thus prove a Detriment rather than a Benefit to the Community for whom it has been designed.

In my Perusal of the Code the following are the Notes made,—

Clause 31. The Word "Passion" appears questionable, and might perhaps be omitted.

Clause 43. and 44. These confer Power of increasing the Punishment in some Cases, which would be objectionable. With reference to Note A. there might be separate Gaols for Europeans on the Hills, Bangalore, or in a Climate where Hard Labour would be less likely to tell on a European Constitution.

Clause 54. This appears to me to be extremely objectionable. It however should be left to the Courts to adjudge adequate Imprisonment for the Nonpayment of any Fine. Seven Days simple Imprisonment would be no Punishment; and every one who has had Experience in the local Courts must know the Difficulty and often Impracticability of collecting Money by the Distrain of the Property of the Individual, from the Facility there is in bringing Evidence to that Property being mortgaged, or belonging to others, and in preventing the Fine from being levied made Punishment altogether.

Clause 57. Hard upon innocent Heirs, and unnecessarily severe.

Clause 60. Unnecessarily particular, and would be unintelligible to our Indian Community.

Clause 62. This is objectionable, with reference to the Nature of the People that are to come under this Law.

Clause 70, 71, 72, and 73. Might all be omitted.

Clause 79. The Right of private Defence, to the causing of Death or any other Harm to the Wrongdoer, might (in India, where Gang Robbery extends to so great a Degree, and Instances so seldom occur of any Resistance being shown to the Wrongdoer) extend to many of the Offences enumerated in this Clause, without the Restrictions mentioned in the Third Paragraph of Clause 75.

Clause 88. This would probably be carried too far, and there would be no End to Inquiry and Accusation if this is to be Law in India.

Clause 90. Thus Bribery to commit an Offence would be punishable under this Clause, and if the Offence be commuted under Clause 88. also.

Clause 98. and 99. Illustration A. How would it be possible to prove what A. considered likely to happen, or how is the "Misperception" to be proved to have existed?

Clause 106. The Punishment for this would appear hardly sufficient.

Clause 107. The Exception in India, where Relationship is carried to such a Degree, would be objectionable, as far as "Relation in the direct ascending or descending Line."

Clause 113. "By Words either spoken or intended to be read, or by Signs or visible Representations," might be omitted.

Clause 133. This with regard to the Individual who took no active Part in the Riot appears too severe. The Punishment prescribed by Clause 130. would suffice, if not cumulative.

Clause 139. There does not appear any Necessity for interfering with Persons not public Servants.

Clause 141. In explanation of "Refreshments," Fruit and Flowers might be added, according to the Custom of the Country.

Clause 142. How is Proof of this Knowledge to be obtained? It would moreover open a Door to Prosecution of all public Servants by disappointed Men.

Clause 143, 144, 145. All objectionable, and calculated to impede Business, and the Power of doing so would be used probably under a view of Annoyance, and hamper the Government much.

Clause 159. There might be Exceptions made on religious Grounds or Scruples, as I believe are allowed in England.

Clause 164. "Causes Annoyance" is too vague.

Clause 173. Insufficient; for instance, for the Punishment of rescuing a Murderer or Robber proclaimed.

Clause 196. This appears objectionable, as it would deter many a poor ignorant Individual from bringing forward a just Claim, under Fear of Imprisonment. It might be left, as it is now, to the Civil Courts;—a Fine for a vexatious or litigious Suit.

Clause 211. This would seem to require Illustrations, as being unintelligible.

Clause 241. This is placing the Coiner and Utterer of false Coin on the same Footing. The former is deserving of a more severe Punishment than the latter.

Clauses 244 and 252. "Knowing it to be likely" might be omitted, and the Person who actually passes false Coin, and he who intends only so to do, ought not to be liable to the same Punishment.

Chapter 12. In the Chapter of Offences relating to Coin there appears to be too great a Difference made betwixt the uttering and coining King's and Company's Coins, and other Coins, such as Bahaery, Ikary Pagodas, &c., which are still current in many Parts of this Presidency.

Clauses 254 and 255. Here again the Act itself, and the possessing with Intention, are made liable to the same Degree of Punishment.

Clauses 265, 266, 267, 268, 269, 270, 271, 272, 273. The Amount of Fine in all these Clauses appears to be excessive.

Clause 363. The Distinctions drawn in the Illustrations of this Clause would be perfectly unintelligible to the greater Part of the Community of India.

Clause 364. Thus an Individual who steals One Rupee and he who steals One Lac are liable to the same Punishment, which is obviously objectionable; and the Punishment in some Cases would be altogether insufficient.

Clauses 377, 378, and 379. The minimum Punishment appears to be insufficient, and too great a Discretion left to the Judge presiding, and which must cause a great Want of Uniformity in the several Districts.

Clause 382. Tearing the Ear is not grievous Hurt; tearing it off or cutting it off might be, and the Punishment cumulative; namely, Ten Years for the Hurt, and Fourteen for the Robbery, is equal to Imprisonment for Life, which would be severe indeed.

Clause 393. If an Individual cheats he should be punished without reference to the Way in which he cheats. All this appears superfluous.

Clause 394. In many Cases the Punishment would be insufficient.

Clause 400. Suppose the Fine cannot be levied?

Clause 423. What Discretion is left in this Clause to the presiding Officer, and how will the Degree of Punishment vary in each District?

Clause 418. This goes too far, vide Illustrations, and would either remain a dead Letter, or a Handle for much Vexation in this Country.

Clauses 448 and 449. The Words "or knowing it to be likely" are objectionable, and the Punishment appears too severe; added to this, it puts the Man who *has* forged and the Man who intends to make use of a forged Document, —the Individual who makes an Apparatus for forging, and he who has possession of one *intending*, to use it,—on the same Footing, and equally culpable. It appears to me that the one is deserving of a much greater Degree of Punishment than the other. The one only meditates a Crime; the other has actually committed it.

Clauses 453 and 454. By far too lenient.

Clause 456. Is not necessary in India, but enacted probably to prevent the Imitation of the Company's Chop, but that might be punished under Clause 448, which extends to Fourteen Years Imprisonment.

Clause 460. He should also be made to restore the Property or its Value.

Clause 463. I agree generally with the Observations in Note (P.), and that a good Master is seldom in much Danger of being voluntarily deserted by his Servant; but still, as the Law stands, there is no Protection for a Master against a refractory and insolent Servant, and who may leave him at a very inconvenient Time. I think therefore there should be some Check over such Servants.

Clause 467. Appears altogether unnecessary, and not likely to occur in India.

Clause 469. Defamation should be left to the Civil Courts. It involves a Consideration of Damages to the injured Party, with which the Criminal Courts should have no Concern. Besides which, the Distinction betwixt what is and what is not Defamation is too close and finely drawn, and would not be intelligible to the Generality of Individuals coming under the Law. Vide Illustrations, in this and the following Clauses.

Clause 485. Might be omitted. It is hardly necessary to punish abusive Language in this Country. There would be no End to it.

Clauses 486 and 487. Unnecessary in India, unless perhaps for Europeans or Settlers.

I feel that the above Observations I have now the Honour of submitting are for the most part imperfect and unsatisfactory; but the Inability I have to command Leisure for a more careful Perusal, will I trust, relieve me from Blame.

In conclusion, I would suggest that some Provision should be made for the Punishment of all Crimes committed in Roadsteads not within Sight of Land, inasmuch as under the Penal Code every Petty Theft or Crime committed beyond the Limits of High-water Mark would be (as it is at the present Time) punishable only by an Admiralty Court; situated probably at Madras, and consequently in most Cases the Witnesses and Prisoners would have to proceed Hundreds of Miles, and be subject to a very heavy Expense and Loss of Time.

I have, &c.,
(Signed) GEORGE BIRD,
Criminal Judge,
Zillah, Malabar.

**T. L. FRANKS Esq. to the REGISTER to the PROVINCIAL COURT of CIRCUIT,
Western Division.**

Tellichery, 8th August 1838.

Para. 1. IN compliance with your Requisition of the 20th April last, I have the Honour to submit such Observations upon the Criminal Code prepared by the Indian Law Commissioners as I have been able to make, without material Interruption to the current Duties of my Office.

2. The Code appears to me to be calculated to supply a *Want* of great Magnitude, and one very fertile in Evil.

3. The existing Regulations take no Notice of several Offences which clearly should be penal; and the European Judge, in disposing of such Cases, has to depend upon a Declaration of the Mahomedan Law affecting them. The Crimes which have been legislated for, with a few Exceptions, are left undefined, and the Consequence is, that even in Cases of ordinary Difficulty the most opposite Views are occasionally taken by the different Authorities who have to deal with them, and no Test exists whereby it may be known that the Decision which finally prevails is the right one.

4. Few Cases could arise for which the proposed Code would not supply a plain Rule, and with the Help of Marginal References and a copious Index the Use of it would for the most part be easy.

5. The Question suggests itself, whether it does not even provide for more coercive Control over the Subject than is needful; but here it should be remembered, that no known Offence, however trivial, can be formally excepted from Punishment without doing Violence to Morality, and offering Encouragement to offend.

6. A Code so comprehensive can hardly be subjected to a fair Trial under the existing Systems for dispensing Justice, the chief Evils of which are, that a Training-up in the lower Grades of Judicial Duty is not considered indispensable to the Attainment of the higher Appointments in the Department, that the Magistracy and the Native Police are overwhelmed with other important and pressing Duties, and that the latter are not subject to the Control of the Officer who can best appreciate their Conduct, and is most interested in the efficient Discharge of the Duties intrusted to them, and who at present is the Criminal Judge.

7. On the First Promulgation of a new Code, such as that under Consideration, it becomes of high Importance to its Success that those who have to give Effect to it should be well exercised in Judicial Duties, and that the Control over such as have to take the earliest Steps in each Case that comes within its Provisions, and who are necessarily almost always Natives, should be prompt and efficient. If this be duly provided for, and the general Operation of the different Establishments be closely watched and supervised, I think that the Result of the Code will be highly beneficial to the Public, and will be appreciated by them. If, however, a bad and ill-checked Means of Administration be trusted to, I am of opinion that many of the Provisions made by the proposed Code for the Punishment of Offences which have hitherto been overlooked by the Legislature will be resorted to as often for Purposes of Oppression and Malice as for the Redress of Grievances, and that thus the Code will be of serious Detriment to the Community for whose Benefit it has been designed.

8. Upon Points of Detail the following are the Observations which I have been able to make.

9. Clauses 43 and 44. Whatever is to operate as a Punishment of an Offender should undoubtedly be awarded at his Trial by the Authority vested with the Cognizance of his Crime. Any Commutation of this Sentence that may take place afterwards should be on the Side of Mercy, not in Enhancement of the Penalty thought adequate for his Offence by the Tribunal which has had to decide on the Question. If this Principle be conceded, the only Question to be determined is whether the Commutations herein provided for are calculated to increase or lessen the Punishment of European Offenders.

10. Of this Point it is to be presumed that the Convict himself will in most Cases be the best Judge; but the Terms inserted, "without the Consent of the Offender," debar him from exercising any Choice between the original Sentence and the Commutation provided for, and raise the Presumption that the Change will be often for his Disadvantage.

11. That such may really be the Case can be shown by Reference to some of the Offences punishable with Two Years Imprisonment, and by incurring which a European is liable to be banished for Life from a Country where all his worldly Prospects may be centered. Among the Offences so provided for are the following, which are more likely to arise among the inexperienced and the intemperate than among those whose deeper and more confirmed Vice might render their Removal from this Country expedient.

The joining or continuing in a riotous Assembly after warning for Dispersion has been given. Clause 130.

The holding out any Threat of Injury to induce a Person to refrain from prosecuting, suing, &c. Clause 199.

A rash Act, indicating a Want of due Regard for Human Life and by which the Death of any Person has been occasioned. Clause 304.

The causing a grievous Hurt, such as may permanently disfigure a Man's Face. Clause 319.

12. Clause 45. Here the Prisoner seems to be invited to judge of the Punishment to which he may fitly be sentenced, without Reference to the Provision which the Law may have made for his Crime, or to the Judge to whom the Application of the Law is intrusted. The Provision renders the Government liable to a Flood of Applications from Prisoners, to dispose of which equitably they should review the Trial in each Instance. For this it is evident sufficient Time could not be spared.

13. Clause 49. It appears to me that a Distinction should be made between Property derived from Ancestors and that acquired subsequently to the Offence by personal Exertion. If the Offender be debarred from enjoying the Results of his own Labour, he must be reduced to beg or steal, unless maintained at the Expense of the Government.

14. Clause 54. The Term of Imprisonment, in default of paying a Fine, in my Opinion, should be extended to One Month. The Natives are fertile in Expedients to avoid Payment of Debts to each other, and the Claims of Justice would doubtless be often evaded. Before, however, proceeding to imprison a Defaulter, Time should be allowed to enable him to realize the Amount of Fine. The frequent Application of this Punishment for which the Court provides renders such Consideration needful, more especially as the Natives of this and of a large Part of India do not abound in ready Cash, but would often have to convert Grain, &c. into Money to enable them to pay the Fine.

15. Clause 61. I think the Judge should be bound to make up his Mind as to the particular Crime of which he holds the Prisoner guilty. When Cases may arise not clearly defined or provided for by the Law, the Legislature is properly the Authority by whom the Deficiency should be supplied. One Object of providing Punishments being to prevent Crime by overbalancing the Temptation to commit it, the Measure of Punishment should be clearly announced. Some of the Illustrations would almost seem to imply that the Judge is to pronounce Sentence without being fully Master of the Facts of the Case, which would never, it is to be presumed, fail to show whether a Prisoner had been guilty of actual Murder, or of abetting therein, &c.

16. Clauses 90 and 91. The Ground of Distinction between the Cases herein provided for and those to which Clauses 88, 95, 97, and 100 relate is not clearly apparent. If the Intention be, that where the Crime contemplated has not been committed no more than One Fourth of the Sentence prescribed for the Offence itself may be awarded to those who may instigate its Commission, the distinctive Circumstance of the Commission or Non-commission of the Offence should be more plainly set forth.

17. The Illustration given of Clause 90 would, however, seem to show that the Distinction is in certain Cases to be considered immaterial, and consequently that Sentence is to be passed thereunder upon one who bribes another to commit a Crime, even if his Instigation should have been unsuccessful, whereas such an Offender would be strictly punishable under Clause 88.

18. Clause 98. The Attempt to determine whether an Instigator had the Means of knowing the probable ulterior Consequences of his Instigation, so as to punish him upon such Grounds for a different and a higher Crime than he had counselled the Perpetration of, will seldom be made with unquestionable Success, and may often lead to erroneous Judgments.

19. Respecting the Illustrations given, it may be asked, how is the Judge (in the Case "a") to satisfy himself that A considered it likely that B would commit a Murder, or (in "b") that B would cause a grievous Hurt? It appears to me that it would be a safer Rule to consider Parties such as the above as aiding and abetting in the Commission of Crimes perpetrated by those whom their Presence and Countenance had evidently encouraged whether such Crimes differed or not from the Offences originally contemplated; but that where a Person had furthered the Commission of a Crime in any way but by affording the Support of his Presence on the Occasion, he should be held guilty only of the Offence towards the Commission of which he had lent his Aid, and be considered free from the Guilt of any other Crimes that might have resulted therefrom or been superadded to the original Design.

20. Clause 142. No Judge who was wilfully unjust would fail to adduce some Sort of Reasons for his Decision. Allowing for the Perversity of Human Minds, how would it be possible to ascertain with Certainty that the Judge knew his Decision to be unjust?

21. Clause 143. Almost every judicial Act operates to the Advantage or Disadvantage of some Individual. If the Judge be ignorant of the Law, or mistake it, or if his Subordinates commit Error in what must be left mainly for them to execute, the Judge, under the Letter of this Enactment, may be punished ignominiously. Circumstanced as Europeans are in this Country, I think the Expediency of embodying such Provisions in the general Code highly questionable, more especially as their Conduct cannot be said to have raised a Necessity for such a Law, and adequate and less objectionable Means of Punishment are vested in the Hands of the Government.

22. Clause 149. As it does not appear to be intended that this and other Penal Enactments directed against public Servants shall relieve them from the ordinary Means of Punishment held over them by Government, the Provision that for the Offences herein mentioned a Fine is to be adjudged "not exceeding" the Emoluments derivable for Three Months by Servants so offending, may be rendered ineffectual by the Government suspending them from Office for a longer Period. With respect to these Offences, the

Term

Term "intentionable Insult to a Superior" requires Elucidation, as mere Argument is often of itself deemed offensive when offered by an Inferior to a Superior.

23. Clause 170. If the mock Purchases herein referred to be clearly fraudulent, the Actors therein might be subjected to the general Provisions against Fraud. The usual Penalty for not completing a Purchase would appear to be sufficient in other Instances.

24. Clause 188. Upon a similar Definition of Perjury the Courts have founded a Practice which renders the Law nearly inoperative.

26. It is remarked in Page 44 of the Notes, that "the Law on the Subject of false Evidence will render unnecessary any Law for punishing the frivolous and vexatious "preferring of Criminal Charges." This ought undoubtedly to be the Result of a Penal Provision against Perjury; but so much is the Law now in force cramped up by restrictive Rules unessential to the determining whether the Evidence which is the Subject of the Charge be false or true, that the Degree of Proof upon which a Suitor may be punished for a false Suit, or a Complainant before the Police for a false Complaint, under Regulation 9 of 1832 would be considered wholly insufficient to lead to a Conviction of Perjury or Subornation of Perjury.

26. The Points which require full and careful Illustration are perhaps more connected with the Code of Procedure than with the Penal Code, but may be noticed here.

27. Firstly. What constitutes a Question material to the Result of a Judicial Proceeding?

28. A Prisoner pleads that the Prosecution brought against him is the Result of a Conspiracy, and wishes to expose the Fact that the Witnesses are related to the Prosecutor. At his Instance the Witnesses would assuredly be questioned on the Subject of the Relationship, but if they gave false Answers it is very doubtful whether an Indictment for Perjury could be maintained against them under the existing System, although their Depositions were calculated to defeat the Prisoner's Plea, and therefore to affect the Issue of the Trial.

29. I would propose that "the giving a false Statement under an Oath, or a Declaration substituted for an Oath, in relation to any Fact connected (in any way) with the "Merits of any Matter undergoing judicial Investigation, with Intention to deceive," should be considered to constitute the Crime of Perjury.

30. Secondly. What is to be considered sufficient Evidence of the Falsehood stated?

31. At present it is an Essential, that Proof should be adduced of the true Facts as opposed to the Falsehood sworn to, except where Two conflicting Depositions in regard to the same Fact may have been given. This Proof is rarely attainable, while Perjury is committed daily, and with increasing Effrontery. Witnesses have been known to swear to minute Circumstances relating to what was said to have occurred more than Forty Years before they gave their Statements, and when they were Children. Though every Person who may hear such Evidence be satisfied of its Falsehood, the Witnesses must escape Punishment from the Want of the Means of establishing the real Truth.

32. Clauses 193 and 194. The Offences herein specified should, I think, be rendered liable to different Degrees of Punishment. The raising a false Claim to Property involves more determined Vice than the removing it from the Power of a Court. It necessitates the Production of false Evidence; it more effectually deprives the Creditor of the Uses of the Property; and is easier, and more frequent of Commission.

33. Clauses 196 and 199. The raising a false Suit appears to me to be a far more serious Offence than that of attempting to deter a Person by Threat from having recourse to a Court of Justice. It is committed with more Deliberation; it must be supported by false Evidence; it occurs more frequently; it is more likely to effect the End which is in view; and, if successful, to entail a greater Injury on the Person against whom it is directed. I would therefore assign the higher Punishment to this Offence.

34. Clause 278. It is the Custom of Missionaries to preach at Native Feasts, where they are often pelted, &c. This is a Disturbance; but the guilty Party appear to me to be those who, in obedience to their evil Passions, attack one who, in furtherance of the Law of God, is endeavouring to lead them to the Acceptance of the greatest Gift which can be offered to Mankind. I doubt whether it be intended that the Missionary should be punished as having caused such a Disturbance. The Introduction of the Word "voluntarily" would imply not; but the Matter should not be left in doubt.

35. Clause 353. I would define the Property the removing of which under particular Circumstances constitutes Theft to be such as the Remover had no Right or Title to possess himself of at the Time he removed it. Of the Case which forms the Subject of the Illustration "b" I should say, that A attempted Fraud when he set about recovering the Value of his Watch, but not Theft when he removed that which was unreservedly his own.

36. I would also define the Removal to be such as is made with the view of fraudulently appropriating or disposing of the Property removed. The Cases specified in the Illustrations "o" and "q" I would designate, the one an Attempt to get Money by a false Pretence, and the other Fraud.

37. Clauses 365, 435, 436, and 437. Whatever may be gained in critical Acenracy of Arrangement, the practical Use of the Code is risked by attempting to legislate separately for each of the different Components of what in effect are integral Crimes. To

punish a common Act of Night Burglary, besides making reference to Definitions, recourse must be had to these Four different Clauses, Three of which are far removed from the First, and an Account must be summed up before it can be ascertained to what Punishment the Burglar may be sentenced.

38. I feel that I have very imperfectly performed the Duty of reporting upon the Code proposed for Adoption, but trust that the Inability to command Time for a more patient and deliberate Investigation of its Provisions, without suspending the current Duties of my Office, will relieve me from Blame. I would suggest as being highly desirable that the Scale of Punishments, the Terms in which the different Provisions are expressed, and the Order of Arrangement adopted, should be fully and minutely examined, with a view to ascertaining that a just Proportion between the Magnitude of Offences and Punishments has been invariably observed, and rendering the Code as plain and unambiguous in Language and as easy of Reference as may be practicable.

I have, &c.

(Signed) T. L. STRANGE,
Joint Criminal Judge.

F. N. MALTBY Esq. to the REGISTER to the PROVINCIAL COURT, Western Division,
Tellicherry.

Sir,

Mangalore, 19th July 1839.

IN compliance with the Instructions of the Judges of the Provincial Court, I have the Honour to submit such Observations as have occurred to me on the Subject of the proposed Penal Code prepared by the Law Commission.

I have considered that I should best comply with the Instructions I have received by forwarding only a few Notes on such Points as have attracted my Attention with reference to the probable Operation of the Code. Upon the Code in general, or the more general Questions which are disposed of in it, I do not feel that I could offer any Observations which would be more than an Expression of my own Opinion. The following Notes refer principally to a few Points in which I think the Operation of some Clauses of the Code will be attended with Inconvenience, or to a few Cases in which some Provision of Law has appeared to me to be necessary, but which the Code does not provide for.

I have, &c.

(Signed) F. N. MALTBY,
Acting Sub-Collector.

Note A. On Punishments. Paragraph 1. I believe there is only One Case to which it appears to me to be necessary that the Punishment of Death should be extended, namely, that of polluting a religious Building with the Intent of exciting popular Tumult. It is seldom that this is done except with the Intention of causing Death; it is seldom unattended by Death, and is always likely to be so by the Death of Numbers. It appears to me to be a Crime which deserves the utmost Penalty of the Law, as much as either Treason or Murder, for it generally combines both those Offences.

Paragraph 2. That Part of the Code which provides that all Transportation shall be for Life appears to me to be most necessary; but I would beg to observe, that the useful Terrors of this Punishment are likely to decrease unless the Prison Discipline in the Penal Settlements is more rigorous than at present. I have been led to this Observation from its happening that Two Regiments lately returned from the Eastward have been stationed in this District, and from hearing the Manner in which Prisoners live, and the Wages they receive as private Servants spoken of in Conversation. Such Information spread by the Sepoys of the Regiment,—perhaps among the Peons of the Gaol,—and by them to the Prisoners, must deduct from the Terrors of the Punishment, especially in a maritime Province. Those Terrors are now very great, but they must gradually decrease.

Paragraph 9. A most important Clause is that which proposes that Compensation be awarded to Persons feloniously injured. On this Point I would beg to express my Concurrence with those who think that in this Country such a Clause is attended with the Danger of leading to false Charges, in order to transfer a true Cause from the Civil to the Criminal File, and to Charges actually false. However correct in Principle, I doubt whether it could be safely applied in Practice to this Country; certainly not without the greatest Caution. I believe that the Interest of the Prosecutor and his Witnesses would throw such Suspicion upon their Evidence as would render it almost impossible to convict a Felon before our Courts, and that the Administration of Justice would be rendered doubly difficult. It was probably this Motive, the Fear of Charges of a felonious Nature being used as a Means of Gain, which led to the Adoption, in the Common Law of England, of the Rule to which the Law Commission object. If it was wisely adopted in England, it appears to me far more necessary that this Precaution should be continued in a Country situated as India. It is possible that in England in the present Day the Rule proposed might be adopted without much Danger; but the State of India resembles far more the State of England when this Precaution was introduced than at the present Moment. In this and in some other Instances I think Room may

may be found for Doubt whether the extreme Refinement of the Code is suited either to the People, or to the Native Judicial Officers by whom it must in a great measure be administered.

Paragraph 11. The Omission of Punishments of a degrading Nature has been adopted upon Grounds which refer only to the Party undergoing the Punishment. Upon this Ground the Reasoning is unanswerable. But if the Object of Punishment is not only, and even not so much, the Reform of the Offender, as the Prevention of Crimes in others, I think it may be questioned whether this Punishment should not be left in the Power of the Judge to award, according to his Discretion. It is a Punishment which has a great Effect on the Public, and I think there will always be Cases when it is necessary to regard this Effect, to the Prejudice of other Considerations. I do not think any Evil could arise from leaving the Punishment, as it now is, discretionary with the Judge.

Paragraph 12. The same Observation applies in some respects to the Omission of Flogging. Upon this Subject I conclude that the Opinion of each Member of the Service will be expected; and I cannot hesitate to offer my own, as I am convinced that the Abolition of this Punishment will be most injurious. I fully agree with those who think that it ought to be dispensed with where it is possible to do so; but I am satisfied that in many Cases and Emergencies it is actually necessary, and that the greatest Inconvenience will be experienced when it is abolished. Unless the Magistracy is armed with some summary Power, many Cases must arise in which their Exertions are utterly useless and hopeless. I believe I could instance some in which Corporal Punishment is the only effectual Means of stopping Crime. The following, among others, may be mentioned.

At a Festival or Fair, where Crowds of low Pilferers assemble, I have known Theft completely checked by the public Corporal Punishment of a few Offenders, when I am sure it could not have been checked by carrying off those Offenders to undergo a Punishment which none of the others would witness.

In a Time of Famine, when it is most important to protect the Grain of a Country, an Imprisonment is a Blessing sought for.

In a Time of civil Commotion, which leads the lower Classes to commence a System of Plunder, and when, perhaps, it would be impossible or difficult to transmit them for Custody.

When a Crowd of disreputable Hangers-on are collected round a marching Force.

In these and many other Cases I do not see how the Transmission of Offenders to a distant Gaol can possibly prevent Crime, and I sincerely trust that this most necessary though disagreeable Power will not be taken out of the Hands of the Magistracy.

CHAPTER IV.

90. The Meaning of this Clause is not clear. If it differs from 88 in that the Crime is not committed, the Illustration ought to run,—“although B. does not give the false Evidence.” If the Difference consists in that Bribery is added to the Instigation (as the wording would appear to show), it is not clear why the Punishment should be less. If it consists in that it applies to Cases punishable by Imprisonment only, it is not clear why a different Rule should apply to these Cases.

94. The Punishment in this Case, as explained in the Illustration, appears to me to be far too lenient for, perhaps, one of the most serious Crimes. Surely Transportation for Life ought to be awarded in a Case when a Man wilfully endangers the Lives of Numbers.

98. “If A consider Murder as likely to be committed by B.” It would in many Cases be impossible to tell what A considered as likely to happen. The English Law appears to me to be necessary. The few Cases in which its Universality may render it rigorous may be corrected by the Prerogative of Mercy, as must necessarily be the Case in many Instances, notwithstanding the utmost Precaution in framing the Law.

101. This Law appears to me very lenient. A in the Illustration is an Abettor, and his Offence is aggravated by a Breach of public Duty. I should therefore conclude that he ought to be liable to the whole Punishment of the Offence he has abetted.

CHAPTER VI.

The Terms “Soldier” and “Sailor” are not defined in the Code; but the various Grades of armed Servants of the Government, from an irregular Corps to an armed Peon, would appear to render some Definition necessary.

I would here beg to observe, that it appears to me to be a very important Question whether some legal Provision is not required with reference to Police Peons, Sibundy Corps, and other Branches of the Service. These Bodies are often called upon to discharge Duties so strictly military that I think some Regulation analogous to Military Law is requisite to provide against Desertion in Times of Emergency, and other Offences. These would perhaps be more suited to local Regulations than to a general Code, but the Penalty of disobeying those Rules would properly come within the Provisions of the Code.

CHAPTER VIII.

Of the Abuse of the Powers of Public Servants.

I am not aware that the Penalties prescribed by this Chapter are unadapted to the Offences for which it provides; but I would beg to offer a Remark upon the Chapter generally. I believe that there are few who have watched the actual working of our Government in the Provinces who have not found Reason to doubt whether, in our Endeavours to protect the People from Oppression on the Part of the Servants of Government, we have not gone too far, and weakened the Power of our Native Servants. It is as necessary that they should be supported in the honest Discharge of their Duties as that those under them should be protected from Oppression. Although, therefore, I do not venture to offer any Remarks upon the Punishment to be awarded when Delinquency is proved, I would beg to observe that it will depend upon the Code of Procedure whether this Chapter is a useful or a most prejudicial one. It must be most prejudicial if the Form of Procedure should allow of public Functionaries being dragged before the *Criminal Tribunal* upon Charges preferred in the usual Form of Offences under this Chapter. I am sure that not a Native Functionary will feel Confidence in the Discharge of his Duties if this Chapter is enforced by the ordinary Tribunals. It is necessary that the Form of Procedure should be such as shall as far as possible protect the Officer of Government from Annoyance, until Delinquency is proved; and I need hardly add, how necessary it is that false Charges should be severely punished. Should it be so arranged that a mere Charge of these Offences preferred before a Magistrate shall put the Accused on his Defence before that Tribunal, the Provisions of this Chapter must have a most prejudicial Effect. The Principle of the Madras Code, of making the public Officer amenable to his Superiors, under Rules differing in this respect from the ordinary Course of Criminal Procedure, appears to me to be best adapted to the Purpose.

CHAPTER IX.

Note F. and Clause 182. I would beg to offer the following Observation on the Note appended to Clause 182 of this Chapter. It appears to me to be framed on the false Principle of intrusting public Officers with Power, and at the same Time distrusting their Use of it. In the present Instance it will be attended with the following Inconvenience. The Officer empowered to issue the local Rule will in all probability be the Collector or Judge; the Party enforcing it a Tassildar or a Munsiff; but the Regulation as it now stands would empower the Tassildar or Munsiff to cavil at and set aside the Law of their immediate Superiors. It would be safer to provide that only those qualified to exercise it should be intrusted with the Power of forming local Rules.

Clauses 159, 160, 161. It appears to me that the Punishment in these Cases is insufficient; that the Courts ought to have the Power of detaining the contumacious Party until he performs the Act necessary for the Administration of Justice.

I think it would be advantageous that a Clause should be added providing adequate Punishment for any Persons who, being in possession of any Document which he is required to produce before a Party competent to make the Requisition, shall wilfully destroy that Document. I am not sure whether this Offence could be punished as Mischief.

Although more properly belonging to the Code of Procedure, there is One Point connected with the Crime of Forgery which I have found so frequently to embarrass the Proceedings of a Charge of this Nature that I beg to refer to it under this Chapter of Offences against Justice. I allude to the Practice of bringing a Charge of Forgery against both the alleged Principal and his attesting Witnesses also. The Practice I have generally observed followed by the Police on a Charge of this Nature has been to put the Witnesses also on their Defence. The Result generally is, that if the Prisoners admit their Signatures to the Deed, and the Deed appears to be a Forgery, they are committed. If they deny their Signatures, there is generally no further Proof against them, and they are discharged. In either Case the Party against whom the Charge of Forgery is preferred is deprived of the Benefit of their Assistance. It appears to me that this Mode of Procedure is open to many Objections; that it would be preferable that the attesting Witnesses should be sent up as Witnesses; that should they swear to the Truth of the Document, and the Document be proved a Forgery, they should be committed for Perjury and Forgery, but that a Charge of Forgery should not be entertained against them until the principal Party be convicted. There may be Objections to a Rule of this Nature, but the contrary Practice is, I think, open to more. From its having occasionally much embarrassed Proceedings, which have come under my Notice, I have thought it worthy of Observation.

CHAPTER XI.

Of Offences relating to the Revenue.

After specifying the Punishment to be awarded against Smuggling, it does not specify that if any other Offence is committed the Punishment shall be accumulative. But there are few Offences so frequently combined with other Offences as Smuggling.

Clause

Clause 216 provides for the punishment of any Person omitting to put a Mark upon a Thing which Mark he is bound to put; but I do not see that any Punishment is awarded in this Chapter for removing a Mark placed by the Officers of Government.

CHAPTER XII.

Of Offences relating to Weights and Measures.

It appears to me that some Clause is necessary to prohibit the Use of Measures prohibited by any local Rule or Order. It is now frequently necessary to prevent, as far as possible, the Use of several Measures of the same Name, but different Capacities, in the same Bazaar (such as different Seers), and this will become particularly necessary should the proposed Plan of adopting an universal Standard be put in practice.

CHAPTER XV.

Clause 283. "The Divine Displeasure." If this Clause is adopted it will be better to add, "the Object of the Displeasure of the Divinity or of any supposed supernatural Being." In this and in many Parts of India it is most usual to invoke the Enmity of inferior Evil Spirits. In such Cases the wording of the Clause would leave Room for Cavil.

CHAPTER XVIII.

Note M. "The Law as we have framed it differs widely from the English Law."

Regarding this very important Question, I would beg to state my Impression that the Rigour of the English Law is necessary. This appears to me to be One of those difficult Cases in which it is necessary to leave much to those intrusted with the Administration of the Law. It is not difficult to imagine Cases in which its rigorous Exercise would appear harsh or even absurd, as in those suggested by the Commissioners; but it appears to me that there are also many in which the Rule would fail to satisfy Justice. For instance, A, in attempting to break into a Dwelling House, causes the Death of the Inmate, as by causing a Part of the Roof to fall in upon him. In this Case, although it might be harsh to execute A as a Murderer, I think the general Opinion would be that public Justice was not satisfied by the Punishment of A for attempting to break into a Dwelling House. The English Law, exercised with Mercy, would appear to me to be preferable to this Provision.

CHAPTER XXI.

Of Offences relating to Property Marks.

This Chapter does not provide any Penalty for removing Property Marks. The Offence is, perhaps, included under other Heads; but it is under this Head that it would naturally be looked for.

CHAPTER XXIII.

Note P. The Law Commission in this Note comment upon the Practice of unlawfully compelling Persons to act as Bearers or Coolies.

It must be almost unnecessary to mention, that were Bearers and Coolies not compelled by the local Authorities to yield their Services, not a Company could march, nor a Traveller move Ten Miles, in many, perhaps most, Parts of India. This is a Fact which it is impossible to disguise; and I consider that in the present State of the Country some special Rules rendering it incumbent upon the working Classes to yield these Services, for a just Remuneration, or find a Substitute, when called upon by competent Authority, is absolutely necessary. The Code would then apply to Persons illegally compelled; that is, compelled by Parties not legally competent to require their Services; but without this Provision the Chapter is quite inapplicable to the State of the Country.

CHAPTER XXIV.

A Case which has lately occurred appears to me to point to an important Omission under the Head of Offences relating to Marriage. In the Case referred to, a Hindoo Girl of Six or Seven Years old was left for a few Days by the Father and Mother at the House of a Relation. This Relation, without the Consent of either Parent, married the Child to a Relation of his own, a Man of about Thirty Years old. The Marriage having been performed, was irrevocable; and the Parents complained against all the Parties concerned. They were punished by the Criminal Court, on reference to the Mahomedan Law Officer. The Code at present does not appear to me to provide for this very serious Crime; that, namely, of marrying a Party without the intelligent Consent of the Party, or of Guardians competent by the Laws of their Religion to act for the Party.

(Signed) F. N. MALTRY,
Acting Sub-Collector.

**E. MAIRBY Esq. to the REGISTER to the Provincial Court of Circuit,
Western Division.**

Joint Magistrate's Office on Circuit, Santagal,
3d November 1888.

Sir,

I HAVE the Honour to acknowledge a Communication from the Court of Circuit under Date the 1st June last, directing me to express my Opinion on the Provisions of the Criminal Code framed by the Law Commission.

2 Both a Want of Leisure and the Absence of the Books to which a full Investigation of the Subject would render Reference necessary obliges me to be short in my Observations, and I have considered it proper to confine my Remarks to the Parts of the Code which peculiarly affect the Circumstances of the Country and the Character of its Inhabitants, without entering on those disputed Points of Jurisprudence, more particularly the Laws relating to Label and Murder, on which there exists a Difference of Opinion amongst Legislators in every Nation.

3. The Language of the Code and the Definitions of the different Offences specified in it claim the First Consideration, and it appears to me that the following Objections may be urged against them. It would, in my Opinion, be hardly possible to translate the Code into the Country Languages; and I am afraid that the Native Officers intrusted with enforcing the Law under it would be confused with the wording of the different Enactments, which are couched in Language and framed on Principles to which they are unaccustomed. Those important Parts of a Code, the Limitations to the Right of Self-defence, and the Definitions of the Acts constituting "Thefts" and Assaults, appear to me in particular to call for the preceding Observations.

4 Another Part of the Code to which I wish to allude is the Phraseology used in Clause 98 and its Illustration, in which a Person is declared to be guilty of Murder if Homicide was committed during a Gang Robbery, in which he was One of the Parties concerned, although not the Striker of the Blow, provided that *he considered* Murder likely to be committed when attempting the Robbery. The same Phraseology (vide Clauses 62, 63, 273, &c) prevails throughout the Code, and it appears to me likely to defeat the Ends of Justice, as the Administrators of the Law might consider that its wording requires direct Proof of a Criminal's Thoughts and Intentions, which Evidence is seldom forthcoming. If it is the Intention of the Code that the Criminal in the above Case should be punished as a Murderer, provided the Circumstances under which he set out to commit the Robbery convince the Judge or the Jury that he contemplated the Possibility of Murder occurring during its Commission, a slight Alteration in the wording of the Clause would remove the Objection to which I have alluded.

5 In concluding my Remarks on the wording of the Enactments, it appears to me proper to express my Opinion, that from an Attempt to embrace every illegal Act the Law is so framed as to be likely to afford Opportunities for vexatious Prosecutions, and thus to be more injurious in its Effects to the Community than if Offenders in some Instances escaped Punishment. I allude more especially to the Definitions of Murder and Manslaughter, which Offence may, according to the Code, be committed through mental Emotions, without corporal Injury, and to Clauses 97 and 294, which provide that "the Omission of Acts which a Person is legally bound to do" may constitute Murder or any other Offences, without there being any Explanation of what such Acts are.

Vide Note A.

6 Another important Part of the Code is an intended Enactment*, that in Cases of Felony a Criminal Prosecution is not to be a Bar, as in England, against the injured Party seeking Redress by a Civil Action. The Character of the Natives makes me apprehend that Advantage would be taken of such a Clause to institute Prosecutions (for which the wording of the Code affords Facilities) where a Civil Action would be the more proper Course, in order that the Delay and Expense of a Suit might be diminished. In this Province Complaints are continually made in the Police Department, solely with the Purpose of assisting Civil Proceedings; and the same probably occurs in other Districts.

7 The proposed Enactment is further open to the Objection, that it will give rise to Two separate Proceedings regarding the same Act; and it appears the less necessary, as Fine constitutes a Punishment throughout the Code, and the Judges might be empowered to appropriate the Amount to recompense the injured Party. The only Case in which I should propose to retain both Modes of Procedure are those mentioned in Clauses 284 and 286, as the maliciously causing the Loss of Caste.

8. I must proceed to advert to the Punishment provided in the Code, and shall divide my Remarks on this Subject into Two Heads. The First relate to the Cases in which the Punishment of Death is inflicted, and the Second to the Omission of Corporal Punishment.

9 The Punishment of Death is proposed to be limited to Two Offences, Murder, and the highest Class of Crimes against the State. This Limitation of the Punishment is made on the Grounds of the Efficiency of the Punishment of Transportation, and of an Inducement being thus held out for Criminals to spare the Lives of their Victims, when otherwise they might have Temptation to Murder. In the Soundness of this Reasoning I am inclined to concur, to a considerable Extent; but there are a Class of Offences, besides

besides those specified in the Code, which it appears to me ought to be punished with the extreme Penalty of the Law. These are, setting fire to Dwelling Houses, Gang or Torch Robberies at Night, accompanied with wounding, and the Pollution of Mosques or Temples for the Purpose of creating popular Disturbances. I am induced to make this Recommendation, not only on account of the Evil which the above Crimes wreak, but because it appears to me that where Loss of Life does not occur it arises from accidental Circumstances, and not from any intentional Forbearance on the Part of the Criminals. I am further induced to believe, from my Observations in this District, that Transportation is fast losing its former Terrors, especially in the maritime Provinces of India, and that it will soon cease to cause much Dread, except to the timid and ignorant.

10. The Abolition of Corporal Punishment is a Part of the Code to which I am decidedly opposed; but at the same Time this Penalty might, I conceive, be limited to Cases of Robbery and Theft, either joined to or without Imprisonment. The above Classes of Crime are generally committed by Persons to whom Imprisonment has no Terrors; and as the lower Orders in India are often worse fed and more hardly worked when obtaining their Subsistence by Labour than when lodged in Gaol, it appears to me a dangerous Expedient to abolish the only Punishment which is regarded by Offenders of this Description with real Apprehension.

11. It has been urged that Experience has shown that Corporal Punishment may be abolished with Safety; but on this Point I would submit, that the apparent Absence of Crime often arises from the Public being induced to abstain from Prosecutions which they consider useless, in consequence of the Want of an efficacious Punishment. The Abolition of this Punishment is also apt, as far as my Experience goes, to cause the Maltreatment of Prisoners, and induce the injured Party to take the Law into his own Hands. In abolishing this Punishment we are acting contrary to the Feelings of the whole Native Population, who are thus induced to be less strenuous in supporting our Police; and it is not to be supposed that they regard with Indifference the Leniency shown towards Persons by whom their Property is plundered and their Persons tortured and otherwise ill used.

12. The remaining Portions of the Code to which it appears to me proper to confine my Remarks are the 8th, 11th, and 15th Chapters, which relate respectively to "the Abuse of the Powers of public Servants," "Offences against the Revenue," and Offences relating to Religion and Caste.

13. The Principle on which this Chapter is framed appears to me to simplify and amend the present Law, by leaving those Offences which are common between public Servants and other Members of the Community to the general Provisions of the Code, instead of making separate Tribunals and particular Punishment for Fraud and Embezzlements committed by public Servants, as under the Madras Regulations. There are, however, some Clauses of the Chapter, and some Parts of its wording, to which I conceive Objections exist.

On the Abuse of Power by public Servants.

14. It appears to me that in attempting to embrace every Species of official Delinquency the Law is so framed as to be liable to give rise to frivolous and vexatious Charges against public Servants, and to render it difficult to perform official Duties with proper Feelings of Confidence and Independence. I allude to the Expression "accepting any Gratification" used in Clause 138, and to the wording of the 142d Clause, by which Imprisonment of Two Years with unlimited Fine is awarded to any Judge who knowingly passes a wrong Decision.

15. The First of the above Expressions is so vague and indefinite that it is likely to be made use of by disappointed Persons as a Means of causing Annoyance by preferring frivolous Charges. The Second appears to me open to more serious Objection. The Clause does not render it necessary to prove any Act of Corruption on the Part of the Judge, and as the Evidence necessary to show that the wrong Decision was knowingly passed is not stated, it appears likely that the Effect of the Clause will be to induce disappointed Suitors, instead of preferring an Appeal, to bring an Accusation against the Judge who gave, in their Opinion, a manifestly wrong Judgment. As the Government always possesses the Power of removing Servants whose Conduct is suspicious or unsatisfactory, it appears to me sufficient that the Code should provide a Punishment for proved Acts of Corruption, such as the Acceptance of Valuables. Many Misdemeanors which morally deserve Punishment would in this Case, it may be urged, escape with Impunity; but no Laws can embrace every Degree of Guilt, and the Attempt to make them do so in the present Instance would probably prove injurious to the Community, by diminishing the Efficiency and Confidence of public Officers.

16. The only other Remark which I deem it necessary to record regarding this Chapter is, that the Provisions made in Clause 149 appear uncalled for in a Criminal Code. While Government possess the higher Powers of Dismissal and Suspension, it appears inadvisable to limit its Power of imposing Fine or Stoppages of Salary. The local Governments ought, in my Opinion, to be left unfettered to frame such Rules as appear to them expedient for securing Subordination and due Attention to Business in the different Departments of the Service.

17. The Provisions of this Chapter appear to me to embrace all the Enactments necessary to protect the Revenue, except that it does not provide the Power of Confiscation

Offences relating to the Revenue.

Confiscation for smuggled Property. Clause 229 enacts that the Code does not repeal the Penalty of Confiscation where it at present exists (as under the Madras Regulations); but I am not aware whether, on the Code becoming the Law, the Regulations will be considered in force.

18. The Argument in the Note on this Chapter relating to the Penalty of Confiscation appears to me only to bear against that Penalty when it is extended to other Property with which smuggled Goods may be seized, or to the Conveyances in which they are transported. In such Cases the innocent may occasionally be punished; but I see no reasonable Objection against the Seizure of the Article attempted to be smuggled. It appears to me, on the other Hand, that this is the only sure Method of punishing the actual Offender, as the Persons employed to convey the smuggled Property are generally not the Owners, and are often employed without being aware that the Service required of them is a Breach of the Laws.

Offences relating
to Caste and
Religion.

19. The Punishment provided in Clause 275 for the serious Offences therein mentioned appears to me insufficient. The Defilement of Mosques and Temples in this Country is always perpetrated with the view of originating popular Disorders, in which Loss of Life almost invariably occurs, and I consider the Person who wantonly commits such an Offence deserves Death equally with any Murderer.

20. The other Enactments in this Chapter relate to minor Offences, which are provided for with severe Punishments, in consequence of the Tendency which they are supposed to have of inflaming Men's Passions, and causing Disturbances. It appears, however, to me, doubtful whether the Law will not be likely to aggravate the Evil against which it is intended to guard, by giving rise to frivolous Prosecutions, and drawing Men's Attention to the Subject.

21. Experience has hitherto shown that direct Legislation on the Subject is unnecessary, and that the Laws against rioting, abusive Language, Trespasses, and Acts provoking Branches of the Peace, joined to the Forbearance mutually shown amongst the different Sects in India, are sufficient to secure to each the unmolested Exercise of their Religion. Such being the Case, it appears to me an unnecessary and imprudent Measure to promulgate such Clauses as the 276th, 278th, and 283d. The other Offences specified in the Chapter deserve (in my Opinion) the penal Provisions which have been made against them.

22. The only concluding Observations which it appears to me necessary to record are, that the Code does not authorize Imprisonment in those Cases where it is necessary to bind Persons over to peaceable Conduct or good Behaviour, and they fail to produce the requisite Bail; but it may probably be the Intention of the Law Commission to provide the requisite Rules in the Law of Procedure. My remaining Observation relates to Clause 156, in which the Penalty appears to me inadequate to obtain the Production of Papers before the Courts or public Authorities.

23. So much unjust Loss and Injury may be entailed on Persons by the Non-production of Documents necessary to the Establishment of Civil Claims, and Parties are frequently so deeply interested in holding back Documents for corrupt or fraudulent Purposes, that I consider the Penalty of One Month's Imprisonment, added to a Fine of 500 Rupees, will often prove inefficient in enabling a Court to procure the documentary Evidence necessary for the Decision of a Case pending before it. The Power of unlimited Fine might, in my Opinion, be more advantageously granted to meet such Cases than on most other Occasions.

I have, &c.

(Signed) E. MALTBY, Joint Magistrate.

(No. 415.)

P. SHARKEY Esq. to the REGISTER to the PROVINCIAL COURT of CIRCUIT, Western Division.

Sir,

Zillah of Canara, Honore, 17th September 1838.

14th April 1838.
1st June 1838.

1. WITH reference to the Two Communications* from the Court of Foujdaree Adawlut, forwarded by you on the Subject of the Penal Code prepared by the Indian Law Commissioners, I have the Honour herewith to submit the Observations which have occurred to me upon a careful Perusal of the whole of the proposed Code, together with the Letter and Notes appended thereto.

2. The First Question in this Case is, the Necessity of the proposed Code.

Second. Whether the Enactments and Provisions of the Code in general are applicable to all Parts of British India, with reference to the Circumstances of the Country and the Habits and Feelings of the various Populations which will be affected by them.

Third. Whether its Provisions embrace the different Offences which are prevalent in India.

Fourth. Whether its Penalties are suited to the Nature and Extent of Crime according to approved Principles of Criminal Law, and the Habits and Feelings of the People, and other Considerations.

First, the Necessity of the Code. There can be no Question of the Necessity of a Code, for these Two Reasons; One, because there is at present no complete and comprehensive Criminal

Criminal Law, and the other, that there is, as the natural Consequence of the former, a **Want of Uniformity in the Administration of Criminal Justice**. At present there are **Two Codes by which the Courts are guided**; One is the **Mahomedan Law**, and the other the **Regulations**. They are both imperfect, indefinite, and arbitrary in many respects, and the former is particularly sanguine, and consequently obnoxious to all Classes of People, the Mahomedans themselves being averse to the Enforcement of its cruel Penalties; while the Regulations, from their great Diversity in the different Presidencies, and frequent Modifications and Alterations, tend to render the Criminal Law extremely uncertain, vacillating, and unsatisfactory.

Second. The Applicability of the Enactments of the Code to all Parts of the Country. Assuming the Fact that it is neither expedient nor easy to give to every Sect, Tribe, and Caste in this Country any special Criminal Law of its own, and that therefore the only other Principle on which such a Law can be founded is the Fitness of the Remedy to the Evil, that is, the providing a Remedy for Crime by Penalties suited to that Object alone, with reference to the Habits and moral Condition of the People, and other local Circumstances, I think the proposed Code as much applicable to One Part of the Country as another. Because, in the first place, the Provisions of the Code appear to me to be judiciously adapted to all these Circumstances. 2d. There is not, I believe, any such Diversity among the People of the different Parts of the Country, or in respect to other local Circumstances, which call for a Diversity of Criminal Enactments. Though they differ in regard to Country and Language, and are divided into numerous Castes, Tribes, and Sects, they are still the same People, throughout the whole Country, in Religion and Morals, Habits and Ideas, and consist in the Main of only Two Classes or Bodies, viz., Hindoos and Mahomedans, all the others bearing but a small Proportion to these. 3d. I cannot find in the Code any Acts contemplated as Crimes which the People of this Country in general, as well as of other Countries, have not been accustomed to consider as Offences deserving of Punishment, or any Penalty which is different from those in Kind or Measure which they have been accustomed to view and receive with Feelings of Approbation and even Gratitude, as tending to the Security of Life and Property, though the Administration of Criminal Justice has not as yet the solid Basis of a certain and uniform Criminal Code, as already observed. I have Reason to believe upon good Grounds that neither the Hindoos nor Mahomedans are much in favour of their own Law, the Hindoos candidly acknowledging that their own Criminal Law is not adapted to the present Condition or Age of the "World," and the Mahomedans freely admitting the Expediency and Propriety of a less severe Penal Code than their own. 4th. I do not think the Penalties prescribed to be inapplicable to any other Description of Persons in India, especially Europeans and Christians in general, for they are neither in Nature nor Extent different from or severer than those prescribed by the English Law, the only other Law they can lay claim to.

Third. Whether the Code embraces the different Offences which are prevalent in India. Upon due Consideration and Reflection, as well as Reference to certain Catalogues of Crimes, I conclude that the Code comprehends the general Mass of Crime; but certain Offences have been expressly omitted in it, for Reasons which I have noticed in the Remarks which I have recorded in support of my Opinion that these Acts should form a Part of the Penal Code. To expect, however, a Perfection in the Code in this respect would be to expect what I conceive no Code has as yet attained, and which it is not possible to arrive at at once. The Suggestions offered in the Letter appended to the Code for its Improvement are, I think, very proper to ensure that Object.

Fourth. Whether the Penalties are suited to the Extent and Nature of Crime. I think they are. The Kind and Measure of Punishment appear to me to be well adapted to the Nature and Extent of the Crime, according to the most approved Principles of Criminal Jurisprudence, as far as my limited Knowledge of the same extends, from a careful Perusal of the Books in my own Possession and those I have borrowed for the Occasion, compared with the Opinions, Feelings, Character, and Habits of the Natives, as well as the Extent and Prevalence of Crime within the Sphere of my Knowledge in this Country. It is my Opinion that the Penalties provided by this Code are, with few Exceptions, very judicious, being neither so sanguinary as those of the Mahomedan Code, nor so severe in many respects as those prescribed by the European Laws, but measured by the only legitimate Standard of rendering the Dread of Punishment superior to the Temptation to Crime, disappointing the Criminal of all Advantages of his Delinquency, and entailing on him, in return, a Portion of Misery not to be preferred for the sake of the Crime.

3. Upon the whole, therefore, the Code, in my humble Opinion, is in every respect admirably adapted to the Country and People it is designed for; and that while, like all other Codes, it is susceptible of Improvement, which Time and Experience may suggest, its Imperfections, which appear to me to be but few and trifling in comparison of its Merits, are not, I think, sufficient to withhold the proposed Code from public Approbation and immediate Adoption, its Defects being quickly, as they may easily be, amended.

I have, &c.

(Signed)

P. SHARKEY,

Principal Sudder Ameen.

I have

I have no Remarks to make under the following Heads:

Chapter 1. General Explanations.

- 3. General Exceptions.
- 4. Of Abetment.
- 5. Of Offences against the State.
- 6. Of Offences relating to the Army and Navy.
- 7. Of Offences against the Public Tranquillity.
- 8. Of the Abuse of the Powers of Public Servants.
- 11. Of Offences relating to the Revenue.
- 12. Of Offences relating to Coin.
- 13. Of Offences relating to Weights and Measures.
- 14. Of Offences affecting the Public Health, Safety, and Convenience.
- 16. Of illegal Entrance into and Residence in the Territories of the East India Company.
- 17. Of Offences relating to the Press.
- 18. Of Kidnapping.
- " Of Rape.
- " Of unnatural Offences.
- " Of Robbery and Dacoity.
- " Of fraudulent Insolvency.
- " Of Criminal Trespass.
- 22. Of the illegal Pursuit of legal Rights.

(Signed)

P SHARKEY,

Principal Sudder Ameen.

CHAPTER 2.

Of Punishments.

There are Two Things connected with this Chapter which appear to me to be objectionable ; One, Clause 50, which declares the Fine to be unlimited where no Sum is expressed ; and the other, the Doctrine contained in Paragraph 25, Note A., That " Imprisonment shall not be taken in full Satisfaction of the Fine ;" that " the Imprisonment which an Offender has undergone shall not release him from the pecuniary Obligation under which he lies," alias Fine, but that " the Confinement which he has undergone may be regarded as no more than a reasonable Punishment for his obstinate Resistance to the due Execution of his Sentence " (Paragraph 26.)

The Reason assigned for the First, viz., leaving the Amount of the Fine unlimited, is, that the fixing of the Amount may in the Case of a poor Man prove highly injurious, in depriving him of much or all that he has, and in the Case of a rich Man fail to operate as a Punishment, since the Amount would be a Matter of total Indifference to him ; or, to quote the Words in the Code, " It is impossible to fix any Limit to the Amount of a Fine which will not either be so high as to be ruinous to the Poor, or so low as to be no Object of Terror to the Rich ;" and the Consequence to the Poor is drawn, from this Consideration, that " the Limit of a Hundred Rupees " (for Example) " would leave it quite in the Power of an unjust or inconsiderate Judge to inflict on such an Offender all the Evil which can be inflicted on him by means of a Fine." This Reasoning appears to me the very one which requires an Enactment diametrically opposite, viz., the Limitation of the Fine. If an unjust and inconsiderate Judge were to act so unrighteously, even where his Power is thus bounded, what may he not do where he is left to act discretionally, or without any Limitation whatever.

If I rightly understand the Object of the proposed Measure, it seems to be that the Discretion vested in the Judge is to leave him to proportion his Fine to the Circumstances and Condition of the Offender in such a Way as to make both the Poor and the Rich to feel its Effects, without reducing the One to much Distress, or permitting the other to triumph in its insignificance. That this seems to be the Intention is evident from the Advantages of Fine being so fully acknowledged and strongly recommended in Paragraph 18, and the Explanation given of the Manner in which it is intended to operate, in Paragraph 20 and the subsequent ones, viz., as a Penalty to be felt by the Offender. It appears to me, however, that the Unlimitedness of the Fine is open to strong Objections.

In the first place, I would observe that the Omission does not secure its End. The Fine being unlimited affords no Security that the Judge would impose less Fine upon the poor Man and more upon the rich ; that in imposing the Fine upon the rich Man he would have his Estate and Property more in view than the Nature and Magnitude of the Offence. It is a Conjecture which I think may be fairly formed in Probability and Reason, that no Judge, whatever his Character might be, would have the Confidence or Effrontery to impose a Fine of 500 or 1,000 Rupees upon a rich Man for a trifling Assault, merely because he would not feel it a Punishment unless the Amount was so large. No Judge, however just or wise, would, I think, consider it fair or just to impose upon a poor Man a Fine of only a few Annas, or a Rupee or so, merely because he is poor, when his Offence deserved a higher Fine. A Judge left to act according to his

his Discretion may consult the popular Opinion, the Proportion between the Offence and the Penalty, the Expediency and Propriety of avoiding Inequalities and Discrepancies in the Distribution of Justice between the Rich and the Poor, which may produce public Dissatisfaction and Disapprobation; he may consult anything but the Design and Intention of measuring his Punishment with the Circumstances and Condition of the Parties alone. While a Judge is thus left to exercise his Discretion as to the Amount of the Fine, what Security is there that, as regards the poor Man, it does not exceed, and, as regards the rich, fall short of any Amount which could possibly be fixed in the Code? If it is possible for a Judge to fix more than what the Party is able to pay if the Amount is limited by Law, how can it be expected that he will fix as much as he can pay if the Amount is not limited by Law? But where it is limited by Law it is certain he dare not go beyond it. Such being the Case, where is the proposed Benefit to the Poor and the contemplated Punishment of the Rich in leaving the Fine unlimited, upon the Supposition, however, that the Sting of the Penalty is in the Amount of it.

Secondly. The Principle upon which the Measure of the Penalty is left to be determined by the Judge is One too difficult, if not impossible, of being adhered to. If the Judge, in imposing a Fine upon a rich Man, is to have in view the Amount of the Fine which alone would operate as a Punishment on him, how far is he to go, or where is he to stop? If the Offender is worth a Lac of Rupees by Reputation, is the Fine to be 100, 500, 1,000, or 5,000? If he is worth Two or Three Lacs or more, is it to be double, treble, or quadruple? What Amount is it possible to determine will be felt by him as a Punishment, and how are his real Circumstances in Life to be accurately ascertained? The same Questions, mutatis mutandis, may be asked with respect to the poor Man. What Fine would be just sufficient to make him feel the Penalty without greatly distressing him? If he is worth Ten Rupees of Property, should Ten Fanams, or One Rupee, or Two Rupees be the Fine? If he is worth less, at what Ratio or in what Proportion of his Property is the Fine to be fixed? It is unnecessary to show the Embarrassment, Anomalies, and Absurdities which this Mode of Procedure must be productive of.

Thirdly. The Argument for the Omission evidently supposes or makes the Punishment to consist in nothing else but the Amount of the Fine. This is an Error in some degree with respect to Offenders of every Description, except those who are utterly abandoned to all Sense of Shame. It is an Error in a great degree with respect to the particular Class of Persons specially alluded to in the Argument, viz., rich and respectable Individuals, because even were the Fine to be only a single Rupee there is a Disgrace in the Punishment (to say nothing of the Arraignment, Trial, and Exposure at a public Bar or in a public Court,) which cannot but be felt in some degree by every Offender, and most poignantly felt by Individuals who have any Ambition to be respected, or any Claim to Respectability; and I have known Instances in which the lower the Fine was the greater was the Chagrin, Annoyance, and Shame of the Party fined.

Fourthly. The Argument is further erroneous, in supposing that a Sum of Money, however small, is a Matter of Indifference to the Majority of Offenders, who are generally Persons of indifferent Circumstances, consisting chiefly of Natives of the Country, who place too much Value upon Money to regard any Portion of it with Indifference.

Thus, while the Omission does not secure its proposed End, the Principle of it is difficult of being adhered to, and the Assumptions referred to in the Third and Fourth Clauses of these Remarks are erroneous. The Omission seems opposed to Two acknowledged Maxims of all Law; one which requires all its Penalties to be proportioned to the Offence, and the other which requires all its Penalties to be so limited and defined as to protect the Offender from an arbitrary and oppressive Judgment. One indeed is the necessary End and Result of the other. No just Law ought to permit the Punishment of an Offender to be carried beyond a certain Extent, which can legitimately be determined by none but the Legislature, upon certain acknowledged and approved Principles, every Departure from a Decision against which cannot but be considered, not as an Act of necessary or retributive Justice, but an Act of Oppression and Injustice to the Offender. To leave, therefore, so important a Part of the Law to the Discretion of a Judge, Two of whom may not be of the same Opinion, is to leave the Prisoner to the Hazard of this very Injustice and Oppression, under the Colour of a just and necessary Correction. The Law, therefore, far from being righteous and merciful, becomes iniquitous and cruel.

According to the first-mentioned Maxim, there does not seem any Reason why the Amount of a Fine should not be as much limited as a Punishment of Imprisonment. In many Cases the same Thing may be said of Imprisonment as of Fine, viz., that there are some, if not many, to whom it is "a Matter of perfect Indifference;" that to many a poor Man it is equally as oppressive, if not more so, than a Fine, for many a poor Man or his Friends would rather be disposed to obtain the Amount of the Fine, and pay it, than that his Children and Family should starve, and himself be deprived of Liberty and its Advantages by a long Incarceration; yet every Punishment of Imprisonment is limited; by the same Principle the Fine ought also to be limited. The Fine being once proportioned to the Offence must be considered as founded upon its legitimate Basis, and like every other limited Punishment be awarded without any Hesitation, whatever the Circumstances of the Offender might be. Should the Fine sometimes exceed the Means of the

Offender to pay it, he ought to suffer in its lieu the common Alternative of Imprisonment. He cannot complain, because he has wilfully rendered himself obnoxious to the Law, and it is therefore fair that he should suffer its Consequences; that he should be as much liable to a limited Fine as a limited Imprisonment. But should the Penalty of Fine be found, which I do not say it will be, inoperative as a Punishment, unless it be regulated by the Principle maintained in the Code, it will be more expedient and consistent to do away with it altogether, and substitute some other Penalty for it, than that the Measure of the Penalty should be left to the arbitrary and discretionary Power of a Judge, especially to "an unjust and inconsiderate Judge."

With respect to the second-mentioned Maxim, which requires all its Penalties to be so limited and defined as to protect the Offender from an arbitrary and oppressive Judgment, it is reasonable to ask, upon the Principle upheld in the Code, what Security is there in a Case where the Fine is unlimited that a Judge, however upright and just, may not adjudge a Fine exceeding the Crime and the Means of the Party fined to satisfy the Demand? The Answer to this is furnished by the Code itself. "It is impossible for the best Judge to be certain that he may not sometimes impose a Fine which shall be beyond the Means of an Offender" (Paragraph 23, Note A.) What Security is there that an "unjust and inconsiderate Judge" may not act as oppressively towards the Rich as towards the Poor? What Security is there that any Judge, whatever his Character might be, may not act sometimes with more and sometimes with less Cruelty towards the one or the other than he deserves? The Answers to these will be found in the same Code, the Paragraph already quoted, and Paragraph 19. "It will be quite in the Power of an unjust and inconsiderate Judge to inflict on such an Offender (the poor Man) all the Evil which can be inflicted on him by means of Fine." These and more would be the Versatilities and Anomalies that will and must result from an undefined Law. Every Argument advanced in the Code in disfavour of a limited Fine applies with redoubled Force and greater Propriety against an unlimited Fine.

Upon the whole, therefore, it appears to me advisable that the Fine in every Case should be limited, restricting the Discretion of the Judge to awarding the Fine only within the Amount limited, according to the Circumstances of the Case and the Condition of the Party.

With reference to the Second Thing which I have observed to be open to Objection, viz., the Proposition contained in Paragraph 25, Note A., that Imprisonment shall not be taken in full Satisfaction of the Crime, and that "the Confinement which he (the Offender) has undergone may be regarded as no more than a reasonable Punishment for his obstinate Resistance to the due Execution of his Sentence,"—that is, his omitting to pay the Fine,—upon the same Principle which permits the Confinement of a Civil Debtor until he has surrendered all his Property (Paragraph 27), I have to observe, that this Law is calculated, in the first place, to render the Penalty of Fine wholly nugatory in many Cases, and, 2dly., it will have the Effect of producing much Injustice in a Majority of Cases.

The Cases in which it is liable to render the Penalty inefficacious are those in which Seven Days Imprisonment alone is provided (Clause 54, Paragraph 24, Note A.) In these Cases the Penalty will be merely nominal; while in all Cases a Penalty should be operative. Who would pay a Fine, however trifling, to avoid the insignificant Confinement of Seven Days? If the Fine is not paid by the Offender, and cannot be recovered by Distress, there is an End of the Penalty. It is true that it is recoverable at any Time within Six Years; but it is not difficult to see the Improbability of this, for who will so watch, mark, and remember the Prisoner or the Transaction as to seek out his subsequent Gains, to ascertain the subsequent Alterations in his Circumstances, and to adopt Measures to recover the Fine within Six Years? Certainly not the Courts, who have enough of new Offenders to engage their Attention to think of the old ones; not the Police or Magistracy, who have enough of other more serious and responsible Duties to overwhelm their Attention. Certainly not anybody else, who can have no Interest whatever in the Matter. But supposing, with all the necessary Vigilance, the Offender should never attain Property enough within Six Years to pay the Fine, is not the Punishment left incomplete? Is not public Justice left unsatisfied? For be it remembered even the Seven Days Imprisonment is not a Substitute for the Fine, but a Punishment for its not being paid. The Fine is still to be collected. It will be productive of considerable Injustice. It is to be remarked that this Punishment of Imprisonment is to extend equally to the Poor and the Rich, whether able or unable to pay. It is to be inflicted, upon the Principle observed in the Case of a Civil Debtor, without any preliminary Inquiry as to the Circumstances of the Offender; that is, his Imprisonment is to follow up the Sentence and to continue for a fixed Period. Assuming the Fact, that the Offender is unable to pay the Fine at all, that though able he is incapable of producing it immediately, but may produce it afterwards, after he had undergone the whole or a Part of the Imprisonment,—will the Sentence which punishes a Man for not performing an Impossibility be not unjust? Will the Sentence which demands the full Amount of the Fine, without giving the Offender Credit for the Portion of Imprisonment which he had undergone from *Inability* to comply with the Demand immediately, be not unfair? And must not this happen almost daily and hourly, where the Judge passes such a Sentence without a certain Knowledge of the real Circumstances

of the Offenders,—without a satisfactory Means of ascertaining their real Ability to satisfy, or not, the Demand? The Injustice of this Proceeding will only be equal to the Length of Time during which the Offender may be incarcerated, and this, except in the Cases of Seven Days Imprisonment, is to be during One Fourth of the Period of Imprisonment for the original Offence, and all this Period is to be “regarded as no more than a “reasonable Punishment for his obstinate Resistance to the due Execution of his “Sentence,” though he be or be not unable to pay the Fine now or for ever; for, as already observed, there is no Exception. In such a Case, where a Man has undergone a lengthened Imprisonment in default of the Payment of the Fine, to strip him of any little Property which he may by and by acquire within Six Years would in my Opinion, and I believe in that of everybody else, be not only “harsh”, but cruel in the extreme.

As for the Analogy sought for in the Case of the Civil Debtor, in the first place there is a wide Distinction between the Case of a Civil Debtor and a Criminal; secondly, the Mode of Procedure observed with respect to a Civil Debtor is unworthy of Adoption in any Case; and, thirdly, the Procedure recommended in the Case of the Criminal is, if possible, worse.

The Distinction between the Two Cases consists in this, that in the Civil Case the Act which induces the Court to pass the Order of Imprisonment is an Act of the Prisoner himself,—a fraudulent and dishonest withholding of a just Debt. This at least is assumed at the Time, though how justly or truly is another Question. But the Debt of a Fine in a Criminal Case is one of the Court's constituting. It may in some Cases be equitable even to punish a Man for contracting a Debt which he could not pay; but how far it would be equitable in a Court to convert a Man's *Inability* to pay a Fine awarded by itself, without any Certainty of his Ability to pay it, into a Crime, and punish him for it, or how far a Court has a Right to assume the Ability or Inability of a Man to pay a Fine at all, or immediately, and pronounce a Sentence of Guilt, are Questions which do not seem to require much Judgment to determine.

The Mode of Procedure observed with respect to a Civil Debtor is unworthy of Adoption in any Case, for while the Object of Imprisonment is to compel the dishonest or fraudulent Debtor to pay his Debt, and not to punish an unfortunate Debtor, it is enforced equally and indiscriminately upon the One as the other, without any preliminary Inquiry as to the Ability or Inability, Fraud or no Fraud, on the Part of the Debtor, and not unfrequently with a pretty certain Knowledge of his utter Destitution, after every Item of his Property had been sold in Execution of the Decree, and himself left a Beggar, and thus very often a poor, honest, but unfortunate Man is dragged into Gaol, at the Hazard of his wretched Family starving to Death, merely because he is utterly unable to pay his Debt. Such a Proceeding, I repeat, is unworthy of being quoted as any Authority in any Case.

But the Procedure recommended in the Case of the Criminal is even worse, for in the Case of a Civil Debtor no Proceeding against his Person is adopted until every Measure against his Property has been exhausted, or every Part of it sold, in Execution of the Judgment against him; but the Procedure recommended against the Criminal is to arrest his Person at once, without any Measures being adopted against his Property.

I am therefore humbly of opinion that the Provision of Seven Days Imprisonment in Clause 5th should be cancelled, that the Design of enforcing Payment of a Fine by Imprisonment should be abandoned, and that in lieu thereof a Provision should be made for levying the Fine by Distress, and if not realized that the Offender should be subjected to a further Period of Imprisonment proportioned to the Fine or the original Period of Imprisonment, or to so much of it as may be in proportion of the Fine unpaid, if any Part of it has been paid or realized, without any Liability to further Pain or Penalty. This, I think, would be a safe and efficacious Law, quite practicable of Enforcement, and free from the Objections detailed above.

I trust what I have said upon this Subject is sufficient to show,—First, that the Law for regarding the Imprisonment merely as a Punishment for not paying the Fine is calculated to render the Penalty of Fine nugatory in many Cases, in consequence of a Period of Seven Days Imprisonment (Clause 5th) being totally insufficient to enforce its Payment, and its Recovery within Six Years being impossible in most Cases, and improbable in almost all: Secondly, that such a Law would be productive of great Injustice, because the Punishment is likely to be, in Ninety-nine out of an Hundred Cases, more for the Inability rather than the Contumacy of the Offender, an Inability perhaps occasioned by the Court itself in precluding the Offender from raising the Amount of the Fine by the close Imprisonment of his Person, an Inability perhaps constituted by the Court itself in imposing the Fine upon him without a proper Knowledge of his Circumstances or Ability to pay it, for there can seldom or never be such a Degree of Certainty as to the immediate Capacity of the Individual to pay the Fine, or his Ability to do so at all, while every Day of the Imprisonment he undergoes in the meantime is for a moral Impossibility which no Law ought to punish, an Impossibility (as observed) constituted by the Court itself, and not for any wilful Act of the Offender, while no Court or Legislature ought in punishing for One Offence constitute another, and thus enhance the Misery of the Offender, that after the Offender has undergone a lengthened Imprisonment for the Nonpayment of the Fine it would be cruel to strip him of any little Property he may subsequently

acquire within Six Years, for the Recovery of the Fine ; that even in such Cases, however oppressive and unjust such twofold Punishment may be, the pecuniary Part of the Punishment must in most Cases prove nugatory, since the Imprisonment being only for the Nonpayment of the Fine, there is no Commutation for the Fine itself, which may never be realized, and thus the Law, though happily yet with much objectionable Inconsistency, remain in most Cases unsatisfied, and a dead Letter : Thirdly, that the Case of the Civil Debtor bears no Analogy to the Case of a Criminal, and the Procedure recommended is neither worthy of Adoption nor strictly applicable in Criminal Matters.

Before I conclude I think it proper to remark what appears to me an Inconsistency which has nowhere been explained in the Code. It is, the Imprisonment of only Seven Days in Cases where the Sentence is Fine alone, and "of One Fourth of the longest Term of Imprisonment fixed by the Code for the Offence" in Cases where the Sentence is Imprisonment as well as Fine. The Reason of this Disproportion is not apparent, since the Imprisonment in both Cases has one and the same Object,—the Enforcement of the Fine, and ought therefore, I think, to bear a due Proportion ; but Seven Days is certainly not a due Proportion to One Fourth of the longest Term of Imprisonment, which may in some Cases be several Months.

NOTE A.

On the CHAPTER of PUNISHMENTS.

Flogging.

I fully concur in the Motives which have influenced the Omission of Flogging, as far, however, as regards such Individuals as those Motives particularly apply to ; but I regret that I cannot think Flogging altogether dispensable with due Regard to the Object of Punishment. In Cases of incorrigible Offenders, who have often been in Prison without minding it, who have been familiarized to Disgrace, and are utterly abandoned to all Sense of Shame, nothing can operate as a Punishment but Flogging, and to such Offenders it can do no Harm whatever, but its Advantage to themselves and to the Public is unquestionable, and it is also the most salutary and expedient Punishment for young Offenders or Boys, as very properly observed in the Code (47th Paragraph, Note A.)

I would therefore recommend that Flogging should be prescribed in all Cases of the Description referred to, leaving the Infliction of it, however, entirely to the Discretion of the Judge.

CHAPTER IX.

Of Contempts of the lawful Authority of Public Servants.

Clause 153. I should have proposed a severer Punishment for the Offence contemplated in this Clause, but that the Provision in Clause 154 renders it unnecessary, as the Acts referred to, except removing any Summons or Notice affixed to any Place, can hardly be committed without an Assault or some Violence, for which Clause 154 provides an additional Penalty.

Clause 156. I think that the Period of Imprisonment in a Case like the one referred in the Illustration (a) of Clause 156, and in all Cases where the Document is of indispensable Importance, should be till the Party does produce the Document required, unless he can satisfactorily account for its Absence. The Document may be of the utmost Importance to a Case, and the Case itself of considerable Value. One Month's Imprisonment or 500 Rupees Fine may be nothing in comparison to the Importance of the Cause, the Wealth of the Offender, or the Circumstances in Life of his Instigator or the Party whom he wishes to serve, while the Punishment should be adapted to its Object, which is more to compel the Witness to produce the Document than to punish him for Contempt in withholding it. With reference to other Cases in which the Production of the Document is not essential, the Punishment proposed in the Code seems sufficient.

Clause 157. Rigorous Imprisonment for Cases of the Nature referred to in the Illustrations subjoined to Clause 157 appears to me to be too disgraceful. Fine should be the principal Penalty, and simple Imprisonment in default of the Payment of such Fine.

Clause 158. The Offence in the Illustration affixed to this Clause is certainly one of Fraud, but I think simple Imprisonment will be sufficient, in addition to Fine, if the latter alone may not be adequate in some Cases.

Clause 159. I should say that if the Oath here required is essential to the due Determination of some Suit or Action involving Interests of Value, the Imprisonment should continue till the Oath is taken. The same Observations are applicable to this which were made with reference to Clause 156.

Clause 160. The same Remarks are applicable to this Clause also.

Clause 161. The same Remarks are applicable to this Clause also.

Clause 162. I cannot discover, though I have referred to the Notes, to what particular Cases this refers, but if to Matters connected with private Rights or Causes falling under judicial Investigation and Decision, it is no less a Crime than Perjury, and ought therefore to be placed under that Head, to be dealt with according to that Law.

Clause

Clause 164. This Clause makes no Distinction between preventing and attempting to prevent, and between these and the mere causing of Annoyance. I think that where there has been an actual Obstruction to the due Execution of a lawful Process, without any additional Offence for which a cumulative Penalty is prescribed by Clause 165 (in which Cases, therefore, the Punishment will be adequate), the Penalty should be severer than that for mere Annoyance, which can never be of the same Consequence.

CHAPTER X.

Offences against Public Justice.

Clause 188.* With reference to the Crime of Perjury, I have already considered this Offence under the Head of Forgery, being one nearly allied to that Offence, and of equal Notoriety and Prevalence, and the Remarks which will be found under the Head of Forgery are equally applicable to this Crime, and for the same Reasons as there alleged. I would propose that this Crime to a certain Extent, marked either by the Amount of the Civil Cause (say 1,000 Rupees), or the Nature of the Criminal Charge (say Theft to a small Amount, or other petty Cases cognizable by a Magistrate or a Criminal Court), in which the false Evidence is given, should be excluded from the Forms of a Criminal Trial, and summarily punished by a limited Fine and Imprisonment by the Authority or Tribunal before which the Perjury is committed, an Appeal being left open to a superior Authority.

In addition to the Reason I have given for this Mode of Procedure under the Head of Forgery, viz., the certain Effect it will have of greatly diminishing if not altogether annihilating this Crime, I have only to state, further, that this cannot be objected to on the mere worse than empty Ground of its being an anomalous Departure from the Mode of Procedure adapted to the Nature of the Crime, since that Mode of Procedure, from the Niceties of a Criminal Trial, and the heavy Penalties annexed to it, tends but to render abortive the Design and Intention of the Law, while the immediate and certain Punishment of the Crime in the Way proposed cannot but produce the most desirable Effect of crushing this at present most lamentable and destructive Crime. The Objection will be found still weaker when it is considered that the summary Mode of Proceeding here recommended is restricted only to Cases of a Nature too trivial to be worthy of the grave and formal Proceedings of a Criminal Trial, and too insignificant for its heavy and dreadful Penalties.

I think a Provision should be made for Prevarications and Contradictions by a Witness or Party in the same or in different Statements, which, though not essential to any material Fact, have yet a Turpitude and Degree of Guilt requiring Punishment, as affecting in no small Degree the Interests in which their Statements are essential.

Clause 190. The Punishment in this Clause would seem intended only for Evidence given in Civil Causes. If so, I think that the Measure of the Penalty should be expressly proportioned to the Value of the Interests intended to be affected by the false Evidence. There is a manifest Difference between a Case of Twenty Rupees and One of 50,000, or a Lack, or more. There ought therefore to be an express Difference between the Penalties for these Two Cases. While Seven Years would be an heavy Penalty for the first Case, it would, in my Opinion, be a very unequal Punishment in the latter Case; and while, in the former, few Judges would be disposed to subject the Delinquent to the disproportioned Penalty of Seven Years, and thus consider it more righteous to allow him to escape with Impunity, the Penalty of Seven Years, in the latter Case, would be scarcely felt by a Man who no doubt had secured an ample Fortune for his Family, and by and-by for his own Enjoyment, as the Hire of his Iniquity. The Principle of a Man's being punished in a Civil Case according to the Magnitude of the Interests intended to be affected by him seems analogous to the Principle acknowledged in the Code, of proportioning his Punishment in Criminal Cases to the Magnitude of the Crime which the false Evidence is designed to fix upon the Party.

CHAPTER XV.

Of Offences relating to Religion and Caste.

Clause 282. This Clause, I think, ought to be qualified with the Explanation in the last but One Paragraph of the Note L.

CHAPTER XVIII.

Of Offences affecting Life.

Definition. Punishable Homicide, I believe, may be reduced into Two Heads:

- 1st. Murder which is premeditated, or without palliating or mitigating Circumstances:
- 2d. Homicide which is sudden, or under palliating or mitigating Circumstances, more or less.

* Note.—I would request that my Remarks under the Head of "Forgery" may be perused before any Judgment is formed on this.

The distinguishing or discriminating Circumstances in both these Cases must of course be determined by the Facts of the Case, as well as the Feelings, Opinions, and Prejudices of the Class to which the Parties belong.

The Code embraces both these Heads of Homicide, with an Omission, however, of One Species under the Second Head, which will be noticed hereafter (vide from Page 30 of these Remarks on this Article), and the Illustrations it has given under each Head seem sufficient to show the Distinction between them. This is all that is required, as far as regards the different Sorts of such Crime, or the different Degrees of the same Crime, which it should be the Province of the Code to comprise.

As the Illustrations, however, seem to form a substantial Part of the Code, or as the Standard by which certain Acts are to be considered as certain Crimes, I think it necessary to make a few Observations on some of them.

The Illustrations b, c, d, e, and g are simply and without any Qualification recorded as Acts of premeditated Murder. But I apprehend that they cannot, without Qualification, be declared as such, because they are not a certain, direct, or independent Means of Death, like the Instances in Illustrations a, f, and h, or like Poison, a mortal Stab, &c. That Death is not the positive, natural, or consequent Effect of such Acts is not only obvious in itself, but is evident from the Possibility of their total Failure to produce any such Consequence. That they are likely to operate unfavourably, and to lead by other Causes into fatal Results, is not intended to be denied; but to attribute to doubtful Causes a positive Effect, and to treat as the direct Means of deliberate Murder what are at the most but of dubious Intention and uncertain Results, would be a very unsafe and dangerous Rule.

For these Reasons I would recommend that the above Illustrations should be qualified with the Condition that these Two Things be clearly proved to render the Acts referred to in them punishable as Murder, viz., that there was a deliberate Intention to cause Death, and that the Act referred to was the *sole* Cause of Death. For example,—

b. That Z was not at the Time in a dying State, or under a predisposing Cause of Dissolution, a posthumous Examination showing that the Disorder under which Z was labouring had not made such an Advance upon him, or produced such Destruction of some of his vital Parts as to have rendered Death inevitable without any other external Cause.

c. That Z had no Means whatever of avoiding the lingering Torture proposed to his Choice; that he was actually subjected to it, and that it was of a Nature wholly insupportable.

d. That the Conviction and Execution of Z were solely and entirely upon the Evidence of A.

e. That there was a deliberate Intention or preconcerted Plan on the Part of e to leave Z in the Jungle, with the view that his Death may be occasioned by wild Beasts or Starvation, by any one of which it may have been caused, it being well known that Z could never extricate himself from the Jungle without a Guide, and that the said Jungle was infested with wild or ravenous Beasts.

g. That there was a deliberate Intention on the Part of A to murder Z, by withholding from him medical Advice, the same being procurable, and that Z's Disease was such as was not above Cure.

In these Cases the Intention of causing Death must be proved by Facts capable of establishing the same, and not to be inferred merely from the Fact of the Death of the Party.

I have also a positive Objection to the Case in the Illustration C annexed to Clause 298 being at all treated as Murder. The Report of Z's Family having perished at Sea can by no means be admitted as a sufficient Cause to induce Z to commit Suicide.

Although these Cases may not be punishable as Murder, they are certainly Crimes of a minor Description, for which a Punishment, though less severe, should be provided.

Clause 299. The Definition in this Clause is not clear.

Punishments.

The Punishments provided in Clauses 300, 301, 302, 303, and 304 appear to be unobjectionable; but I think an express Distinction should be made between the different Degrees of Principals in a Case of Murder, and in the Punishment accordingly.

Clause 305. This Law prescribes for Homicide committed by Rashness or Negligence in the Perpetration of some other Crime the same Punishment as for similar Homicide without the Attempt to commit any other Crime. The Principle upon which no Difference is made between Homicide in these Two different Cases is, that in both Cases there was no Intention of Murder (as appears from Paragraphs 54 and 55 of Note M.)

Accordingly, as far as the Homicide goes, the Offender is not liable to a greater Punishment than that prescribed in Clause 304 for mere Homicide without an Attempt to commit any other Crime; but for the other Crime committed or attempted to be committed, in which the Homicide ensued, a separate Punishment is awarded. But here there is an Inconsistency, for though there is a Difference between the mere Attempt to commit that other Crime and the actual Perpetration of it, the same Punishment is awarded for the Attempt as for the actual Perpetration. It does not appear upon what Principle.

Principle. No Distinction is here made, since the Homicide cannot be the Reason of it, that being separately proceeded for, and declared not to require an enhanced Punishment, more than a mere rash or negligent Act without any Attempt to commit any other Crime. It appears inconsistent that, while the actual Perpetration of a Crime is visited with no more than the Punishment annexed to it, the mere Attempt should be punished with a severer Penalty. This seems to require Consideration.

As far as the Homicide in the Commission of some other Crime may be purely of the same Description as that described in Clause 304, I do not see any Objection to the same Punishment being awarded, superadded to the Penalty prescribed for the other Crime; but I would restrict this to such Cases only in which there is clear and satisfactory Evidence of the Homicide being of the Description referred to, while all such Cases where Homicide has ensued from such a Degree of criminal Perseverance or Defiance of Consequences, or previous Preparations indicative of a murderous Intention in case of a criminal Necessity, I would leave entirely to be dealt with as Manslaughter or Murder, according to the Circumstances of the Case.

It is proposed in Paragraph 53 that, "when a Person engaged in the Commission of an Offence causes Death by pure Accident, he shall suffer only the Punishment of his Offence, without any Addition on account of such accidental Death." The Reason of this Law (as appears from the Arguments adduced) is, that Homicide caused by pure Accident in the Commission of a Crime is equally as innocent as Homicide caused by pure Accident unattended with any Crime whatever, or by an Act which is in itself innocent, the Principle in both being the same, viz., that there was no Intention of Murder or of causing Death.

Where the Homicide can be satisfactorily made out to have happened through pure Accident, and to be entirely free from all Culpability, there can be no Question but that such Homicide does not merit Punishment; but I do not think this Principle can with Safety be extended to all Cases in which Homicide ensues in the Pursuit of another Crime.

Whatever Analogy there might be between Homicide occasioned by pure Accident in the Commission of a Crime and Homicide ensuing from an Act innocent in itself, I am of opinion that there are Cases in which there is a wide Difference between Homicide arising from an Act innocent in itself and Homicide caused in the Commission of a Crime. This Difference is constituted by an obvious Difference in the Spirit and Disposition which prevail in each of these Cases, notwithstanding the Absence of a real Intention to cause Death; such Spirit or Disposition being in one Case wholly destitute of all Mischief or Apprehension to Society, while in the other it is fraught with Danger in proportion to the Circumstances of Risk and Hazard to Human Life under which it is committed. In a Case perfectly innocent in itself there is not the least Disregard to any known Law, and therefore a Spirit perfectly harmless; but in the Perpetration of a Crime there is a Spirit and Disposition of actual Mischief, and of absolute Defiance of all attending Consequences, even where there is the least Appearance of an Intention beyond a certain or particular Act of Crime. As observed in this Code itself (Paragraph 52 of Note M.), "No Man can so conduct himself as to make it absolutely certain that he shall not be so unfortunate as to cause the Death of a fellow Creature." It is therefore reasonable to assume that a Man in venturing upon the Commission of an obviously criminal Act does not make it absolutely certain that it will not lead to the "Death of a fellow Creature," and that therefore he enters upon the Crime with a Spirit of Defiance of the worst Consequences. It is obvious to perceive that though there is no Intention or apparent Intention of causing Death, there is nevertheless a Principle which is equally as dangerous as the Intention itself, and consequently rendering the Death which ensues from it deserving of Punishment; while an Act, innocent in itself, cannot merit any Penalty, not having been influenced by the same Principle of Action.

In illustration of the foregoing Argument it may be observed, that there is an essential Difference between a Man's going out with a loaded Gun for the lawful Purpose of a Sporting Excursion, and a Man's going out similarly armed for the unlawful Purpose of Robbery or Theft. In the One Case there is not the remotest Design of endangering Human Life; while in the other the Design it is obvious is against Human Life, and should the Thief's loaded Gun go off, and shoot a Man dead, while, armed with it, he is wrestling with the Man who is endeavouring to seize him, this certainly looks like a pure Accident of the Kind contemplated in the proposed Code; but it certainly is not a pure Accident, for here was a previous Disregard of Human Life against which the Thief had thus armed himself, and it was easy to foresee that his wrestling with the Gun in his Hand was likely to be attended with fatal Consequence. All this, it is reasonable to assume, in the Case of a Thief or other Criminal, must have been calculated upon by him before he had entered upon his criminal Expedition; while in the Case of the innocent Huntsman there was or could not have been anything of this Foresight, much less of such Venture or Disregard of Human Life.

The Example of the Pilot, in Paragraph 50 of the Note M, appears to me to be another Case which would admit of a similar Illustration, and not one in which the Homicide can be considered excusable as purely accidental, as maintained in the Code, because in this Case also there was a Hazard and Risk of Human Life which it was easy

to foresee or anticipate, and the Pilot, therefore, in exposing the Lives of those whom he had kidnapped and forcibly put upon his Vessel, must be considered as having done so with a deliberate and premeditated Disregard of their Lives and Defiance of Consequences. A Vessel, it is well known, is at the best Time liable to a Thousand Dangers from various Causes, and the Pilot can be excusable only when People voluntarily expose their Lives in his Ship, but certainly not when he forces them against their Will into a Predicament of imminent Danger and Hazard of Life, though he himself is liable to share in their Fate.

I cannot concur in their Reasoning in the Fifty-second Paragraph of the Note, that the Addition of a Punishment for Homicide caused in the Perpetration of an Offence "is an Addition made in the very worst Way," because I cannot admit the Excuse made for the Pickpocket to be a good One, for the very Occurrence of the Accident referred to in the Note shows the Liability of its happening, and it is no Palliation on the Part of the Pickpocket that he did not previously consider it, for it was his Business to weigh well every Consequence, and avoid what was likely to produce it; otherwise it is fair to assume that he was unmindful and regardless of such Consequence, a Spirit which cannot be imputed to any fatal Consequence where the Act occasioning it was quite innocent and harmless. Were Offenders to be allowed to steal, rob, and commit other Offences with perfect Impunity to all other Consequences ensuing or attending such Crimes, it is easy to perceive how unmindful and regardless they will be of all such Consequences, and what little Security there must be of Human Life. The Parallel drawn between the Pickpocket who has caused Death and him who has not caused Death, holding them both on the same Footing, because their Intentions were the same, though the Consequences were different, is not, in my Opinion, founded upon a tenable Principle, because the Punishment is to be awarded according to the Amount of the actual Consequences which have ensued, so long (as admitted in the same Place in this Note) as there was "no great Care to avoid causing Death;" and I therefore do not conceive it to be unreasonable that One Pickpocket should be punished more severely than another, for (as observed in the same Place) "the good Effect which such Punishment can produce will be to deter People from committing any of these Offences which (however, it may be observed,) turn into Murder what are in themselves mere Accidents."

For these Reasons I am of opinion that an increased Punishment should be prescribed for Offences in the Commission of which Death may be caused, though not voluntarily, or by Rashness or Negligence, but by such a Result or Consequence which it was not improbable to happen, and which therefore ought to have been calculated upon by the Offender, who therefore ought to be held responsible for the same.

Of the causing of Miscarriage.

I think it would be proper, by a certain Definition, which is wanting in the Code, to show at what Stage a Miscarriage is to be considered a criminal Offence; for I have known Instances of Women being sent to Court upon Charges of forcible Abortion when the Embryo or Fetus could scarcely have been formed, and when the Expulsion could have been of nothing more than dead or lifeless Matter. Perhaps it may be described to be a forced Delivery of an Issue after it has attained Life, of which it may have been deprived before Delivery or immediately after, by the Effect of a Potion or Medicine administered for the Purpose, either by the Woman herself voluntarily, or at the Desire or Instigation of another, or by some other Person, with or without her Consent, or by the Effect of a sudden Fright wilfully and maliciously caused by the firing of a Pistol or Gun close by the pregnant Woman, or by throwing upon her a loathsome or dangerous Reptile or Vermin, or by any other Means which, according to established Experience, is sufficient to cause a Miscarriage, with the wicked Design of producing an Abortion, for the Purpose of destroying the Evidence of Pregnancy, or preventing a Co-heir to an Estate, or for some other criminal Purpose.

It is easy to perceive that an Abortion may be caused at a very dangerous Stage of Gestation, and by Means the most subtle, and for Purposes the most wicked, amounting, in fact, to real Murder. I have heard of a young Brahmin who attempted to cause an Abortion by firing a Pistol by the Ear of his Stepmother, with the view of becoming the sole Inheritor of an Estate left by his deceased Father, with the Provision of its being divided between himself and the unborn Child, in case only of its proving to be a Boy. This Attempt, however, failed, by his unpractised and bungling Mode of Procedure having excited a Suspicion of his Design, and prepared the Woman for the Explosion.

Although in very many Cases the Fact as to whether the Child was or was not alive at the Time the Act was committed for producing the Abortion may be a Matter of Doubt, and which is the Reason why the English Law* does not treat the Crime as Murder, but as a great Misprision, there certainly may be Cases in which the Fact of the Destruction of the Life of a Child in ventre matris may be proved in the most satisfactory Manner, by Evidence as to the Time of the Woman's Pregnancy, the Movement of the Child in the Belly, her healthy Condition, and other Circumstances.

Adverting, therefore, to the moral Certainty in certain Cases of a Child's being destroyed in the Womb, and the aggravated Form in which this Act may be committed, together with the Frequency of this Crime in this Country, I am of opinion that the Measure of Punishment prescribed in Clause 312 for the causing of Abortion in every Shape and under every Circumstance is by no means adequate, or compatible with the obvious Design of Murder in most such Cases.

If I rightly understand the Reason assigned for the Lenity of the proposed Law in the Sixty-second Paragraph of the Note M, it is, that any Law upon the Subject " may " in this Country be abused to the vilest Purposes." That " the Power of bringing a false " Accusation of this Description is therefore a formidable Engine in the Hands of " unprincipled Men." It is also observed, that the Charge of Abortion is One which, even where it is not substantiated, often leaves a Stain on the Honour of Families.

I have to observe, in the first place, that if these Reasons are in any degree admissible, they ought to exclude all Law and Punishment for Abortion, but are certainly not calculated to account merely for a Mitigation of Penalty. But as regards either, these Reasons are of too general a Nature. There is no Crime but to which they are equally applicable, for there is no Law which may not be abused to the vilest Purposes. There is no Charge which does not leave a Stain on the Honour of Families. There is no Case in which the Power of bringing a false Charge may not be a formidable Engine in the Hands of unprincipled Men. And there is no Law of which it may not with equal Reason (if Reason there is) be said, that it will produce much Misery and Terror to respectable Families, and a large Harvest of Profit to the vilest Pests of Society; and much more in the same Strain and to the same Purport.

The Object of every Law is to prevent Crime, for which End the Measure and Quality of the Penalty is to be adapted to the Magnitude and Extent of the Crime. The Punishment in this Case is for an Act justly held criminal by all Laws and Countries, viz., the Destruction of Human Life; for though the Infant is not yet, as the Lawyers say, in *rerum natura*, it is still Life, which both the Laws of God and Man declare (upon good and substantial Reasons) to be unlawful and wicked to destroy; and it is a Crime which in this Country is of most frequent Occurrence. The Law ought, therefore, in this Case to proceed exactly upon the same Principles as in all other Cases under similar Circumstances, without any Regard to Considerations which can never supersede the Necessity of a Law where a Crime exists, or be permitted to weaken its Effects by substituting a partial or ineffectual Punishment.

Secondly, These Reasons are advanced exclusively of Two Considerations: One, that Charges of the Nature referred to are never brought until the guilty Female has been discarded by her Family and Friends, and the Stain on the Honour of the Family has already been sustained; and the other, that there are Laws and Checks to restrain the vilest Pests of Society from so abusing this or any other Law to the vilest Purpose in so free and unconstrained a Manner as is here supposed. According to my own Experience, though limited, and the Inquiries I have made, I believe it will be difficult, if not impossible, to produce a single Instance in which a Woman has been accused by any Person of the Crime of illicit Abortion who had not already lost her Character, and been discarded by her Friends and Relatives.

Upon the whole, therefore, I am of opinion that the Measure of Punishment proposed in the Code is not adapted for all Cases, and that an increased Penalty is necessary, which must be regulated by reference to the most heinous Forms in which this Crime is sometimes committed, and by the best Opinions and Sentiments of the European Jurists in general.

Of Hurt.

Among grievous Hurts deserving of Ten Years Imprisonment are described the Privation of a Joint, a Dislocation of a Bone, and such Hurts as cause the Sufferer to be " in bodily Pain, diseased, or unable to follow his ordinary Pursuits during the Space of Twenty Days."

These Things are laid down in an absolute and unqualified Manner, so that, according to the Letter of the Law, the Terms " Joint " and " Twenty Days " must determine the Measure of Punishment, and it is easy to perceive that they are not unlikely to lead to or furnish Ground for arbitrary Sentences, too severe, and disproportionate to the Offence, for the Joint or Dislocation may be of the least Importance, and the injured Party may be subjected to " bodily Pain, diseased," or " unable to follow his ordinary Pursuits," for not Twenty but Forty or Sixty Days, without the Injury being in the least dangerous or important. I have known of a Case tried by myself, in which a Part of a Man's Ear had been bitten off by another in a Quarrel, and though the Award was of no Consequence, nor the Injury of any material Consideration, the injured Party was in bodily Pain, diseased, and unable to follow his ordinary Pursuits for nearly Two Months. But surely Ten Years of Imprisonment for a Case of this Nature would be beyond all Proportion.

It is indeed observed in the 74th Paragraph of Note M that in apportioning the Punishment both the Extent of the Hurt and the Intention of the Offender have been taken into consideration, and the best Criterion of these Particulars it is observed in the same Paragraph is " t^e. Length of Time during which a Sufferer is in Pain, diseased,

or incapacitated from pursuing his ordinary Vocations." But this cannot be the best Criterion, for it is acknowledged in the same Paragraph to be a "defective Criterion," and a very defective One it certainly is, as may be perceived from the Instance given above.

I think there is a much safer and simpler Criterion by which these Things may be judged, viz., the real Extent and Nature of the Wound or Hurt, and the Circumstances under which it was inflicted or caused, as may be ascertained by the ordinary Course of personal Inspection, surgical Examination, and oral Testimony.

I therefore fully agree in the Opinion expressed in the Code (Paragraph 71 of the Note referred to), that the Law of the French Penal Code, which suggested the Provision or Criterion in question of Twenty Days, "is undoubtedly One of the most exceptionable Laws in the Code," and "ought to have been completely recast."

I accordingly propose that this Criterion, and the Expression "Joint," should be omitted in the Code, as calculated to be productive of a Penalty which "would be in the highest Degree unjust and cruel." The Distinction between Hurt and grievous Hurt seems to me to be sufficient; while the Difference between them may be ascertained by medical Opinion and other Evidence.

Of wrongful Restraint and wrongful Confinement.

The full Period of Imprisonment in Clause 335 for wrongful Confinement is Three Years, in addition to Three Days for every Day of such wrongful Confinement. Clause 336 prescribes the same Period of Three Years, but adds, "in addition to any Term of Imprisonment to which he may be liable under the last preceding Clause." It is not clear whether by the Words "any Term of Imprisonment under the last preceding Clause" is meant the full Period of Imprisonment therein prescribed, viz., Three Years more, with the Three Days for every Day, or only the latter, viz., the Ratio of Three Days. If Three Years more, the total Period will be Six Years, besides the Three Days for every Day, which I apprehend will be excessive.

The same Observation as applicable to Clause 337.

Of Assault.

I should object to the Definition of Assault given in this Code on account of its " quaint Phraseology," as acknowledged in the Code, (Note M, Paragraph 87), and the loose and undeterminate Expressions used; but the Term Assault is itself sufficiently intelligible, and the Illustrations show the Nature of the Acts which the Designation Assault comprehends. If, however, a more accurate and proper Definition be considered desirable, that given in "Williams's Justice," Vol. 1., Page 218a, Blackstone's Commentary, Vol. 3., Page 120, may, I think, be substituted.

I have no further Observations to make under this Head.

CHAPTER 19.

OF OFFENCES AGAINST PROPERTY.

Of Theft.

Clauses 364, 365, 366, and 367 prescribe Punishments for Theft, without reference to the Amount or Value of the Property stolen. I cannot discover any Explanation for this Omission in the Code. That contained in Paragraph 27 of the Note N is merely to account for the Omission to distinguish Theft from any other Act merely venial, by defining that the Property should be of "some assignable Value."

There can be little Doubt but that the Object of Punishment being to render the Dread of it superior to the Temptation to Crime, the Measure of Punishment ought in every Case to rise above the Advantage to be derived from the Offence. Three Years Imprisonment (the maximum Period in the Three First Clauses) would certainly be of no Consequence or Concern to a Thief who expects to obtain or has actually obtained a Booty of One or Two thousands of Rupees or more, which he knows is a great deal more than a poor honest Man, or he himself, perhaps could procure, not in Three Years, but during the whole Course of a long and laborious Life. According to this Principle, a Punishment of Three Years would be worse than perfect Impunity in most Cases, where, so far from its being a Preventative of Crime, it would, from its Lenity, or entire Disproportion to the Advantage in view, be an Inducement to the Commission of Theft. It would further be productive of a very unfair Inequality in the Distribution of Punishment, since it must place upon a Par the Man who has been guilty of a trifling Theft from Want or Necessity with the Thief who has purloined a Set of Bank Notes or other Property worth 50,000 Rupees from the mere Motive of enriching himself; or, in other Words, it must subject a Man who has stolen only 200 or 300 Rupees, or perhaps much less, to precisely the same Punishment, viz., Three Years, as the Thief who has gained a Booty of Two or Three thousands or Fifty thousands of Rupees, so long as the Act was simple Theft, such as is contemplated in the Law in question.

I am therefore of opinion that the Punishment for Theft should be regulated by the Value or Amount of the Property stolen, as far as it is possible to ascertain the Value or probable Value of such Property; where it is not, the Punishment must of course be limited without reference to such a Principle.

Of Extortion.

The Definition (Clause 368), with some of the Illustrations, seem to represent the mere putting in fear (when attended with Success) as sufficient to constitute Extortion ; but I think there is a Circumstance with which it should be qualified, as forming an essential Ingredient in the Crime ; viz., that the Party has no other Alternative, but either to comply with the Demand of the Extortor or suffer the threatened Consequence. The Danger to Society consists only in Atrocities which Society cannot prevent without the Aid of the Magistrate ; but it would be an injurious Abuse of his Time to call for his Interference to supply the Want of common Sagacity, and to substitute his Power in the Place of ordinary Prudence and individual Precaution or Means, which would be sufficient to defeat all undue Attempts to cause any real Injury. To elucidate my Meaning I need but refer to the Illustrations.

Illustration A. The Threat to publish a defamatory Life of Z. was not such as to leave Z. no other Alternative but to comply with A.'s Demand, for it threatened no such immediate Danger as to leave Z. no Time to resort to legal Measures to prevent A. from putting his Threat into execution, or to leave him no Opportunity, if executed, of completely refuting the Defamation ; it was not such a Threat as left no Room or Hope of its never being enforced, because it may be fraught with greater Danger to the Threatener than the threatened, as it would furnish a legal Ground for a Criminal or Civil Prosecution against the Offender himself, and render him obnoxious to Society. Consequences which have a powerful Weight, even, it is believed, on the most abandoned of Human Beings, and which the threatened Man may easily anticipate, not to allow them to frighten him so easily into a Compliance with an unjust Demand.

The other Illustrations, except e, may be used in the same Way, being open to the same Remarks, mutatis mutandis, as by no Means of that pressing Nature as leaves no Alternative but Compliance.

With reference to Clause 369, I think the Punishment should be proportioned to the Amount or Value of the Thing extorted, where such Value can be ascertained or fixed, and this upon the same Principle as that alleged by me with reference to Theft, from which (as admitted in the Note N, Paragraphs 28 and 29.) Extortion differs but little in some Cases, and not at all in others. See Remarks under that Head.

The Remarks I have made in respect to the Instances in the Illustrations seem applicable to the Threat referred to in Clause 373, for I do not think it a Case of such a pressing Nature as to leave no other Alternative but Compliance.

I think that the maximum Penalty for a mere Threat of the Nature referred to in Clause 374 is excessive. I know it is consistent with the English Law, according to which " maliciously to threaten to accuse any One of any Crime punishable with Death, " Transportation, or Pillory, or any other infamous Crime, with Intent to extort Money, " Security for Money, or Goods, &c." is Felony punishable by Transportation for Life, or any Term not less than Seven Years, or Imprisonment, with or without Hard Labour, for any Term not exceeding Seven Years. But I do not see such Evil or Danger in the bare Threat as to render so severe a Punishment necessary, for before it is executed it can do no Harm (I am speaking only of bare Threat) to the Person threatened, but must rather subject the Threatener himself to Punishment.

I think that a moderate Fine, or short Imprisonment, or both, would be an adequate Punishment.

Of Criminal Misappropriation of Property not in possession.

Clause 383. The Expression " fraudulently takes " in the Beginning of this Clause seems to apply even to the Case excepted, which in the " Exception " is declared not to be an Offence. This Mode of wording was of course, if I am right, a mere Inadvertence, but should be altered.

The Exception and Illustration " A. " declare the taking and appropriating of Property, in certain Cases to be not an Offence, or a fraudulent taking or appropriating. The Way in which this is declared seems to exclude all previous Measures for ascertaining the Owner, and to authorize the Appropriation even when there is an ostensible Owner. All Property must be presumed to have some Owner, either the actual Proprietor of the Property itself, or the Proprietor of the Premises where the Property in question may be found, and this may be a private Individual or Government.

For this Reason I am of opinion that the Law upon this Subject should be qualified with a Provision to the Effect that the Appropriation should not be legal without previous Notice of the Fact to a constituted public Authority, and due Publicity of the same Fact through him.

With reference to Clauses 384 and 385, I think that the Measure of Punishment should be regulated by the Value of the Property, the same as in Cases of Theft, from which the Acts described in the said Clauses do not differ, especially the One referred to in Clause 385, for, by whatever Designation it may be called, it is certainly Theft.

The Reasons given in Paragraphs 23 and 24 of Note N, for not designating it as such is more fanciful than substantial, if it is not indeed perfectly fallacious, because, in the first place, whether there is an immediate Owner or not, the Act is evidently committed with a thievish Intention it is an Act in which the Animus furandi is manifest. In

the next place, the Expression "out of Possession" is a Nonentity signifying nothing, unless the Property is left wholly and entirely destitute of a Claimant or Guardian, which however is obviously not the Meaning in this Place, but merely a momentary or temporary Cessation of an actual Proprietor or Guardian. But this, in the last place, is evidently a false Idea, because the Moment the Possessor of the Property dies his Heir-at-Law succeeds to the Inheritance and virtually to the Possession, whatever Obstacles there might be to his taking immediate Possession, while the Property must in the meantime be presumed to be under the Care or Possession of some other Person; so that, strictly speaking, the Property is not for a single Moment without a real Proprietor or unostensible Claimant or Guardian.

Of Criminal Breach of Trust.

Clause 387. I think that the Measure of Punishment should be proportioned to the Value or Amount of the Property involved in the Breach of Trust.

Clause 388. The Misappropriation of anything contained in a Letter or Packet of the Nature of Property ought, I think, to be punished as Theft, with reference to its Value.

Of the receiving of stolen Property.

Clause 390. The Measure of Punishment in this Case should be proportioned, I think, to the Value of the Property, where the same is ascertainable, in the Cases of simple Theft, or according to the Nature of the Crime by which the Property was acquired in other Cases.

Of Cheating.

Clause 392. The Definition in this Clause seems to embrace every Case without Distinction in which Fraud is apparent, whether it be such as may have been easily guarded against or not.

I think that in this Case, as in Extortion, the Law should be expressly qualified with a Provision for excluding from the Jurisdiction of the Criminal Courts such Acts which, though apparently fraudulent, may yet have been fairly guarded against by common Prudence, or which were not accompanied by any such Artifice or Trick as was beyond Human Precaution, and this precisely for the same Reasons as those mentioned under the Head of Extortion.

I think the Distinction referred to in Mr. Williams's Justice (Vol. II. Page 584) a very proper one. It is there observed, that "the true Distinction that ought to be attended to in all Cases of this Kind, and which will solve them all, is this, that in such Impositions or Deceits where common Prudence may guard Persons against the suffering from them the Offence is not indictable, but the Party is left to his civil Remedy for the Redress of the Injury that has been done him;" for, as he observes in another Place, Page 583, "the Court will not sustain an Indictment where one Man makes a Fool of another." But he explains: "Where false Weights and Measures are used, or false Tokens produced, or such Methods taken to cheat and deceive as People cannot, by any ordinary Care or Prudence, be guarded against, then it is an Offence indictable."

This Observation with respect to the Definition would not have been necessary but that Cases are contemplated in Illustrations g, h, i, and in Paragraphs 45 and 46, as Criminal Offences, which it does not appear proper or expedient should be dealt with as such. It is to be observed that the Danger to Society is in Acts beyond the legal Control or Sphere of Human Means. The Acts referred to in the Illustrations and Paragraphs in question are not such Acts. They afford every Opportunity and Means of Inquiry and Detection. There is no Danger whatever of a Person being duped or deceived in Cases of similar Nature, not even the "weak and credulous Person," for whose sake the Law appears to have been stretched so far, unless, indeed, he is so weak and credulous as to render him unfit for the Management of his Affairs. If the Law must step in to assist the wilful Neglect and Carelessness of a Man in Cases of the Nature alluded to, where his Common Sense and Means were sufficient to guard him against Deceit, then there will hardly be a Case in which the Help of the Magistrate may not be demanded. A Man may, for instance, deliver his Money for the mere asking of it, and then go and complain to a Judge that his Money was taken from him. It is not the Deception that is so much to be considered, as insisted upon in the Code, as whether that Deception was avoidable or not, for not only can that Deception be of no consequence whatever to Society which could never have produced any Injury but by the wilful Permission of the Party alleged to have been deceived, but the Evils which would result from every Case of the Kind being made criminally punishable would be much more serious and injurious to Society than the Deception can ever be. It must expose to Ridicule Tribunals of Justice who countenance such absurd and silly Cases, and allow their Time to be taken up in the grave and solemn Investigation of the Question, whether the Man who allowed himself to be thus easily duped was an Idiot or a Man of Common Sense. It will break down the Barrier between all criminal and civil Acts confounding them together, open a wide Door to endless Criminal Prosecutions upon Prettexts the most frivolous and malicious, and destroy all mutual Confidence and commercial Faith, for no Borrower would be sure but that the Lender may not bring a criminal Charge against him on the

feasible

feasible Pretext of Deception. Many a Lender there may be who would not scruple to take advantage of his Neighbour's Necessity, in lending him Money, and bringing a Charge of Deception against him, and thus blast and ruin the Reputation and Character of perhaps an honest Man,—much honest than the Lender. All therefore that has been said in Paragraphs 48 and 47 can have no Force but with respect to Cases of such Deception, which, being really dangerous to Society, are out of Human Power of guarding against; and this may be easily made out by Circumstances, of which the peculiar Degree of Simplicity, Credulity, or Weakness of the Object imposed upon will of course form One.

As to what has been said in Paragraph 49, it does not at all alter the Case as argued above, for A's boasting was not sufficient to deceive Z, for it was in Z's Power to ascertain the Truth or Falsehood of his boasting, and it was his Business to have done so before he allowed it to have any Weight with him. I do not see any Force or Relevancy in the other Arguments advanced in this Paragraph.

Clauses 394, 395, and 396. I think in this, as well as in Cases of Theft and Extortion, the Measure of Punishment should be proportioned to the Value of the Property cheated; for One or Two Years Imprisonment is certainly no Punishment for a Man who has cheated, and placed beyond the Means of Recovery a large Sum of Money which Fifty Years honest Labour could never acquire.

I have a Doubt whether the Case in Illustration "A" of Clause 392 is not one of uttering a Forgery knowing it to be such. If so, it ought, I think, to be placed under the Head of Forgery. The Punishment contemplated in the Clause referred to is certainly not adequate to such an Offence.

Of Mischief.

Clause 399. The Definition of Mischief in this Clause seems to confine it only to Cases in which Property alone is involved. But it is obvious that Mischief may be committed in a Diversity of Forms, and under a Variety of Circumstances. I think that the Definition in Blackstone* is more explicit and comprehensive, viz., "malicious Mischief" *Vol. 4., p. 242. "or Damage is such as is done, not animo furandi, or with any Intent of gaining by another's Loss, but either out of a Spirit of wanton Cruelty, or black and diabolical Revenge;" and I would add, "or a wanton and vicious Disposition, or injurious or wicked Frolic."

Clause 403. The Imprisonment of Two Years for Mischief to any Extent above 100 Rupees seems inadequate. This Principle which directs the Measure of Punishment, viz., the Amount of Loss occasioned by the Mischief, should, I think, be carried up higher along with the Punishment in proportion.

Clause 404. This also refers to Property, but prescribes the Punishment without regard to its Value. It also does not appear why the Imprisonment for the poisoning the Cow in the Illustration "A" of Clause 404 should be only Two Years, while that for poisoning of any "Animal" which perchance may be a Cow too of the same Value, in Clause 406 should be Three Years. This appears to be an Inconsistency that requires to be considered or amended.

Clauses from 406 to 416 seem to make no Distinction between the mere Attempt and the actual Perpetration of a Crime, for the same Extent of Punishment is prescribed for both; and in the Absence of an express Distinction it is questionable whether a Judge may make such on his own Authority, while the Law certainly leaves it discretionary with him to award for the Attempt the same maximum Punishment as for the actual Perpetration. If there is any Difference between the Two, there ought, I think, to be an express Difference made in the maximum Punishment for each.

Clauses 407 and 408. I have a Doubt whether the Penalties in these Clauses are adequate to the Acts referred to in them, for they may in certain Cases be productive of considerable Damage or Danger. I therefore think that the Penalties should be proportioned as much as possible to these Considerations.

CHAPTER XX.

Of Offences relating to Documents.

This is one of the Two Offences* which are the Bane of this Country; but which, though of all Crimes the most prevalent, are yet the least punished; not that there is no Law for its Punishment, but that that very Law is its Protection, from the Enormity of the Punishment it prescribes, without a Discrimination of its different Degrees and Circumstances, and the minute Precision in Evidence which it requires for its Conviction; so that while, on one hand, the Severity of the Penalty renders the judicial Officer loth to subject the Offender to so unequal a Punishment, for what in a Majority of Cases is comparatively but of trivial Importance, and such are the Mass of Cases daily brought before Courts, on the other hand the Minutiae of Proof required for the Conviction of these Offences, generally places the Offence beyond the Reach of Punishment; and yet it is not to be denied for a Moment that there are seldom Ninety-nine out of a Hundred Cases of a civil Nature in which Perjury and Forgery are not as clear and obvious as Noonday, though not unprotected by the Quibbles of Lawyers, and the Niceties, or, rather, Intrica-

cies of Law. As the extensive Prevalence of these Offences is owing to the Want of a certain and immediate Punishment, which neither the existing Law nor the proposed one, which is similar in Character, is calculated to secure, it is evident that a Law capable of ensuring it is absolutely necessary, whatever its Character might be, whether civil or criminal, provided it is uniform and effectual in its operation, and necessary and beneficial in its Object.

These Observations are intended specially to refer to Two particular Classes of Forgery ; viz. first, to those filed or produced as Evidence in Cases of a Nature which are made Matters of Investigation before the Courts ; and second, to those intended for defrauding the Customs, Land or Sea, or for violating any Revenue Law respecting any Article of Revenue.

The Remedy I would propose for these Two Species of Forgery is, though of a penal Nature, yet of a summary Description, to be enforced without the Formalities of a Criminal Trial, but only within certain Limits, embracing the chief Mass of such Cases, which are too trivial for the heavy Penalties of the Criminal Law, and too subtle to come under its Conviction, or in which alone Punishment is so much required and yet so entirely evaded.

I would accordingly propose that these Two Species of Forgery should be entirely excluded, not from the Criminal Code, but from the Forms of a Criminal Trial, a special Provision being made for them, viz., that they should be immediately taken cognizance of by the Judicial, Magisterial, or Revenue Officer within whose Province the Forgery may be committed or uttered, and punished with Fine and Imprisonment, to be regulated according to the Value of the Property which is the Object of the Forgery, or the Nature and Description of the Forgery, his Decision being left open to an Appeal to his immediate superior Authority. I would limit the Amount which should render such Forgeries summarily punishable by them to a certain Sum, say, 1,000 Rupees and under.

Besides the above Two Classes, there is a Third, viz., Forgeries produced either in the Shape of Evidence, Charges, or Complaints, being fabricated or drawn out or signed by others than the Person to whom the Document or Signature is ascribed as the Author thereof, but the Object of which is not Property, but an Injury to the Person, Character, or other Interests of an Individual. These Cases also being of the Class first mentioned as Forgeries not available previous to a judicial Investigation ought to be brought under the same summary Law.

I would recommend the above Powers to be vested only in the Officers from the Principal Sudder Ameen and Head Assistant Collector and upwards, whether Judicial, Magisterial, or Revenue, and that the inferior Authorities of the same Description should be authorized in all Cases of forged Documents produced before them for Investigation to forward them to their immediate Superiors, for Consideration and Disposal by them according to the above proposed Provisions. The only Objection which I am aware of as being liable to be alleged against this Mode of Punishment is, that it may tend to deter People from preferring their Claims before the Courts of Justice, lest their Documents, though *bonâ fide*, may, through Haste, Error, or Prejudice, be condemned as Forgeries, and themselves rendered liable to Punishment. To this Objection I have to reply, that it is more subtle than solid. In the first place, it presupposes what ought not to exist, viz., Haste and Prejudice, and what must exist in every Department, viz., Error. I see no Reason, therefore, why a Power of Punishment may not be committed as much in the Tribunal recommended as in any other, where all these Defects may equally exist, and where indeed there is less Chance of Amendment, since the Opportunities of an Appeal are little or none. If the Objection, therefore, is good for anything, it is unfair that it should be confined only to this Department, when it may be urged with equal Force or Truth in regard to all others over which Human Power presides ; and then there is an End of all System, for Haste, Error, and Prejudice must by a Parity of Reason be allowed to pervade the whole.

Secondly. The Objection supposes an Improbability, for a true and genuine Document may fail of Proof, or be opposed by some counter Document, but can never be convicted of Forgery, and the Confidence it inspires is above that Fear which it is supposed will deter its Exposure to public View or judicial Investigation. Consequently, if the Law recommended above has a Tendency to debar the Institution of Claims, that Tendency will happily be confined to Claims founded on Fraud and Forgery alone, where Detection and Punishment are sure and certain, but certainly not extend to Cases supported by honest and *bonâ fide* Vouchers, in respect to which, whatever the Success of them may be, no such Fear can naturally exist. But lastly, if of Two Evils the least is to be chosen, according to the good old Maxim, it requires not much Understanding to determine which of the Two is the least,—the Existence of an extensive and pernicious Evil,—or a Law whose vital Effect is the opposite, good, though, like all other sublunary Things, it is not unattended with some degree of real or imaginary Inconvenience, which indeed in the present Instance is to me obviously but the latter. I have only further to refer to a few additional Remarks in defence of the summary Mode of Proceeding here recommended, which have been made by me under the Head of Perjury in the Chapter of Offences against Public Justice.

The Definition in the First and Third Articles under this Head of the Code does not appear to be sufficiently precise, and is, I conceive, defective in Two essential Points; for it does not provide, first, that the Fabrication, either in whole or in part, should be of an injurious Nature.*

Secondly. That the counterfeit Signature or Mark should be to an injurious Fabrication, or (if the Document be otherwise not unlawful) essential and necessary to give it Value or Effect.

Forgery may be reduced into the following Nine Classes :

First. Forgeries or Fabrications expressly intended for and made use of in no other Way than as Evidences in Courts of Justice, or before Revenue, Magisterial, Judicial, or other Officers, in regular or summary Suits or Cases, or other summary Matters affecting Property.

Second. Forgeries and Fabrications of every Description for defrauding the Land or Sea Customs of Government, or for violating any of the Revenue Laws respecting any Revenue Article, including all Licences for the Sale of spirituous Liquors, Revenues, Permits, Manifests, Stamps, &c.

Third. Forgeries or Fabrications produced before the above Authorities in the Shape of Charges, Representations, or Evidence, of which the Object is not Property, but an Injury to the Person, Character, or other Interest of an Individual.

Fourth. Forgeries of a similar Object, but not liable in the first instance of being produced before a public Officer for judicial Investigation.

Fifth. Forgeries or Fabrications not affecting the Property, Person, or other Interests of another, but from some unlawful and improper Purpose, such as Passports, Licences for Marriage, Residence, or other unauthorized or prohibited Purpose of personal Benefit or Convenience, or Testimonials of Character, &c., which are not of the Nature of Evidence or Documents which are in the first instance brought before a public Officer in his official Capacity for judicial Investigation.

Sixth. Forgeries or Fabrications of Ttoohdees, Orders, Bills, or other Documents, of whatever Denomination they may be, for the Payment of Money at Sight, or some Days Sight, and which, according to the Usage and Custom of Merchants, Bankers, and others, are received and honoured upon Credit.

Seventh. The having in one's Possession forged Documents, knowing the same to be forged.

Eighth. Forgeries of Seals or other Instruments adapted for the sole Purpose of Forgeries.

Ninth. The having in possession such Seals and Instruments.

That all these different Classes have different Degrees of Criminalty, and each Class various Degrees of Guilt, according to the Value of the Thing which is the Object of Forgery, and other Circumstances, and that for this Reason, and the ensuring of Punishment for each Class of Forgery, by the Nature and Promptness of the Punishment, special Provisions and different Degrees of Penalty are absolutely necessary, will not, it is presumed, be readily denied.

I have now therefore to ascertain whether these different Classes of Forgeries have been distinguished either by a specific or express Discrimination, as they ought to be, or by any Allusion in the Punishments.

As to any express Classification, there is none. But in Chapter 10, of Offences against Public Justice, in the Illustration "C" of Clause 1,839, express Mention is made of the First Class. In Clauses 217, 222, 223, and 224, of Chapter 11, "Of Offences relating to the Revenue," express Provision is made for some of the Offences embraced in Class Second. Clauses 444 and 445 of the present Chapter (20), "Of Offences against Documents," seem to allude to the Sixth Class. Clause 443 to the Fifth Class. Clause 189, Illustration (C) of Chapter 10, and Clause 446, allude to the Third and Fourth Classes. Clause 445 seems to embrace the Second Class as well as the Sixth. Clause 449 provides distinctly for the Seventh Class. Clauses 447 and 448 provide distinctly for the Eighth and Ninth Classes. And Clauses 218 and 219 of Chapter 11 expressly provide for the making or possessing One particular Sort of Implements, viz., such as are specially adapted for defrauding the Revenue.

It must be observed that the Clauses in the present Chapter (20), containing mere Allusions to the Classes alluded to, are neither so explicit or definite but what each from its general Terms may be indiscriminately applied to other Forgeries than those it seems to allude to. For instance, Clause 443, while it seems to allude to the Fifth Class by its Illustrations, seems to imply more, or may fairly be construed to imply more, (Illustrations not being sufficient to show all the Cases intended by the Clause,) from these general Expressions, "Whoever, with the Intention of causing any Injury to any Party," and, "or of rendering any illegal Act or Omission easier and safer than it would otherwise

* Note.—It is not uncommon for Cases to happen in which a forged Signature is not of any Value, not being at all necessary; as in a Case of One out of several Puttails affixing the Name of a brother Puttail in his Absence to a Petition signed by all the others, representing the Unfitness of some Individual selected as a Successor to a deceased Puttail of their Body, but which Signature of the absent Man was not at all essential or necessary to give it any Effect which it had not already been calculated to produce by the Signatures it had already received. Such a Case, it is presumed, could never, in Equity, be pronounced punishable with the heavy Penalties of malicious and injurious Forgery.

"be." Now Frauds and Injuries of every Description may be brought under the Meaning of these Words, though the Illustrations refer only to Two Instances of a particular Description.

So with respect to Clauses 444 and 445, which, while they make a Difference in Punishment, do not discriminate the particular Classes of Forgeries intended by them respectively. In the former, the Terms "valuable Security" only being used, and the latter speaking merely of Forgeries for cheating, while the Article, "Of Cheating," contemplates Forgeries of equal Value with those referred to in Clause 444 of the present Chapter; and, indeed, the Object of all Forgeries being to cheat, these different Terms alone would never be a sufficient Distinction, while a Distinction is absolutely necessary.

Vide Illustration
"A" of Clause
392. of the Article
"Cheating."

Punishments.

Chapter 10., Clause
190.

In this Code, for the First Class, the maximum Punishment seems to be Seven and the minimum One Year with Fine. That such is to be the Punishment where Property is affected is only to be inferred (for the Distinction is nowhere explicitly made) from the Illustration "C" of Clause 189 of Chapter 10; and it is a Matter of Doubt that must be cleared up, whether this is all the Punishment that is intended for this Class of Forgery, or whether the maximum Penalty in Clause 444 of Chapter 20 is likewise applicable to this Class.

The Principle upon which this Penalty is proposed does not appear, and it is obvious that Seven Years would be a disproportionate Penalty for an extensive Forgery of 50,000 or a Lack of Rupees. I think there should be some certain Data for regulating the Measure of the Punishment, and a more uniform and fair one than the Amount of the Property attempted to be defrauded I do not think there can be, and I have already proposed that to a certain Amount (1,000) the Penalty should be awarded summarily, with an Appeal left open, and that beyond that the Case should come under the general Forms of Trial and Penalties of the Criminal Law for other Cases of Forgery for which the same is provided.

Class 2. There is no express Provision for all the Cases embraced in this Class. Clauses 217, 222, 223, and 224, in Chapter 11. refer only to certain specific Acts connected with this Class, and prescribe different Degrees of Punishment. If there is any other Clause providing for this Class it must be 445 of Chapter 20, because it is intended for Forgeries, for cheating; and Revenue Forgeries are of course for cheating. If this Clause is applicable, or intended to be so, it is desirable that it should be so expressly stated, to remove all Doubt; or some express Provision made that may be generally applicable to all Revenue Forgeries contemplated in Class 2.

I do not perceive the Principle by which the Punishment for this Class is regulated, or rather the Data on which the Measure of Punishment rests. I think it ought, as far as the Amount of the Fraud or attempted Fraud can be ascertained, to be regulated by such Amount; and where no Amount can with Propriety be fixed, the Punishment should be regulated by the Nature and Description of the Forgery. In the present Code, supposing Clause 445 of Chapter 20 to be applicable to this Class, the maximum Punishment is Seven and the minimum One Year with Fine. The same Punishments are proposed in Clause 217 of Chapter 11, and not any higher anywhere else; but it is obvious that there may be extensive Frauds of this Nature demanding severer Punishment. It is therefore desirable that a Principle be fixed, at once providing for every Degree of the Offence, and establishing an uniform Measure of Punishment. I do not see any good Reason for the Punishment for the Offence in Clause 222 (Chapter 11), of using a counterfeit Stamp, being so much less than for that in Clause 217, of "performing any Part of the Process of counterfeiting any Stamp."

Chapter 10, Clause
190.

Chapter 10, Clauses
191 and 192.

Class 3. The Injury of Person, Character, or other Interests liable in the first instance to Judicial Investigation. There are Two Degrees of Punishments proposed for this Class; one, the Maximum of which is Seven Years, and the Minimum One, with Fine, for such Forgeries as aim at convicting a Party of some Crime which would render him liable to not more than Seven Years Imprisonment with Fine; and the other to more than Seven Years. The Fact of the Seven Years being restricted to the first-mentioned Cases, viz., Forgeries in Cases for which the specific Punishment does not exceed that Penalty, is only to be inferred or assumed from a Provision in Clauses 191 and 192 being made for Cases deserving of higher Penalty; but it would be desirable that this Restriction should be expressly mentioned. At present the Principle by which the Punishment from Seven Years and under is to be regulated does not appear. The Penalty, I think, should be the same as for the Crime which the Forgery was intended to convict the Party of; a Principle which is recognized by this Code in the Clauses referred to (191 and 192).

Clause 446 of the present Chapter notices One special Article of those comprised in this Class, viz., Injury to Reputation or Character, and provides a maximum Punishment of Three Years and a minimum of Six Months Imprisonment, with Fine. I have already proposed that this and similar indefinite Objects of Forgery should be compressed into One separate Class, and subdivided, partly to be cognizable summarily under Class Third, and the others to be disposed of criminally under Class Fourth, according to certain fixed Principles; and I think this a more convenient as well as legal Method than

than the Consideration of some of them expressly in an isolated Form, which in effect amounts to the Exclusion of a great many others, while all ought equally to be provided for.

Class 4. The Fourth Class has the same Object as the Third, and the only Difference between them, is that the Fourth is not, like the Third, liable in the first instance to Judicial Investigation, or the Consequences to Property, Person, or other Interests do not depend upon such Investigation, but are attempted to be produced directly and immediately, independently of the same. This Class would have required a special Notice merely, if the Intention had been to separate a Part of it for summary Disposal in the Way I have proposed. This not being the Intention of the Code, the same has not been done; and, excepting the Separation, I do not think this Class (the Fourth) needs any Distinction as regards the Measure of Punishment; only it should be liable to the Form and Penalty of Criminal Trial.

Class 5. The Penalty proposed in Clause 443 for the Fifth Class appears unobjectionable, except that the Fine should be fixed, and commuted to a further Period of Imprisonment, perhaps to One Fourth or Third of the original Period; and with reference to my Observations in Page 77, upon the Ambiguity or Indefiniteness of this Clause, I would recommend that it should be rendered more simple, specific, and explicit.

Class 6. With respect to this Class, the only Provision of the Code that I can find applicable to it is Clause 444, all the other Clauses upon this Subject having reference to some one or other of the other Classes of Forgery. The maximum Punishment in this Clause is Fourteen Years, and the minimum Two Years, both with Fine; but I do not perceive the Principle by which this Penalty is to be regulated. I think that in this as well as in Class First the Amount which was the Object of the Forgery should be the Principle by which the Measure of Punishment should be fixed. Lest any Objection should be made to this Principle in general, in a Case of this Nature, I would observe that I see no good Ground for objecting to it in this Case any more than in Cases of Theft, Robbery, Extortion, &c., in which the Measure of Punishment generally depends upon the Amount stolen, &c., and for just the same Reason, that the Difference in the Value constitutes a Difference in the Injury contemplated. It may be said that Forgery is a Crime of a dangerous Character, as it is oftentimes an easy Mode of cheating. If so, let the Penalty be one and the same for all Cases from 50,000 Rupees to a simple Fanam, for then there is but One invariable Principle to go by, the dangerous Character of the Offence; but if any Difference of Punishment is admissible, then it must be upon some other Principle as well as the Evil of the Crime, and that Principle I am apt to think must be the Extent of the Forgery. Where the Punishment is sufficiently severe for the Extent of the Forgery, or the Value of the Sum attempted to be defrauded, the End of Punishment is amply answered, and all further Severity is not only quite needless and inhumane, but frustrative of its Object, for the Reasons already shown. Clauses 444 and 445 do indeed give a great Latitude in merely fixing the Maximum of Punishment, viz., Fourteen and Seven Years, leaving it to the Judge to award, if he chooses, only Two Years in one Case and only One in another, instead of Fourteen and Seven; but what may appear a valuable Security to one (as expressed in Clause 444) may not be so to another, and what may appear to one to be punishable under Clause 444 with Fourteen Years Imprisonment as a valuable Security may appear to another to be punishable only as Forgery for cheating under Clause 445 with Seven Years. Hence the Punishments must be ever fluctuating and arbitrary, for Want of an uniform and steady Principle, and more must be left to the Judge than is either expedient or proper. I therefore recommend that the Measure of Punishments for the Forgeries of the Sixth Class be made to depend upon the Value of the Property aimed at by the Forgery.

Class 7. I consider the maximum Punishment proposed in Clause 449 for the Seventh Class, viz., Fourteen Years, to be excessive. It is quite true that Possession of a forged Document may be considered a Presumption of an Intention to make use of it, if not immediately, yet on a fit Opportunity offering, and there can be no Question as to the Existence of a Degree of Turpitude in retaining a Forgery, knowing it to be such, and the Necessity of aiming at the very Root of the Evil; but nevertheless I cannot view the mere Possession of a forged Document to be of equal Criminality as the actual Attempt to make use of it. I would in the first instance confine this Class to such Forgeries only as involve Property, as seems to be the Intention likewise of the Clause in question; and I would make the same Distinction with respect to them as with respect to Documents of the First Class, which are unavailable previous to a Judicial Investigation, or but as Evidences before public Officers or Courts, and those of the Sixth Class. All Forgeries of the Seventh Class similar to the former I would subject to the same Mode of Trial, viz., in a civil Form, under the same Limitations and Rules as regards the Amount of the Forgery, and to a Penalty from One Third to One Fourth of that proposed for the actual Use of such Forgery; and the Forgeries of the Seventh Class similar to those of the Sixth, I would subject to a less Measure of the Penalty proposed for similar Forgeries, but under the same Form of Trial, viz., criminal.

Classes 8 and 9. I observe that the Offences mentioned in Clauses 218 and 219 of Chapter 11. are of a similar Description as those mentioned in Clauses 447 and 448 of Chapter 20, which have been formed into Eighth and Ninth Classes. The Punishments, however, are different, those for the Cases mentioned in Clauses 218 and 219

being, the Maximum, Seven, and the Minimum One Year with Fine ; and those for Cases mentioned in Clauses 447 and 448 are, the Maximum, Fourteen, and the Minimum Two Years, with Fine.

I do not perceive the Principle by which these Punishments are regulated. I am of opinion that the Punishment for these Classes of Forgeries should be regulated by the following Principles :—

First. For making or possessing Implements for counterfeiting Documents, Stamps, &c. of a specific Value, a Fine extending to Ten Times the Amount of such Value, with a proportionate Period of Imprisonment.

Second. For making or possessing Implements, &c. for Forgeries not of a specific Value, but which may be used to a considerable Extent by repeated Frauds, I would propose a Fine from Four hundred to Six hundred Rupees, with Imprisonment from One to Three Years. The Fine to be commuted to One Half of the original Period of Imprisonment.

Third. For making or possessing Implements, &c. for Forgeries not of a specific Value, but not, from their Nature and other Circumstances, capable of being used for any other than trifling Frauds, a Fine from One hundred to Three hundred Rupees, with Imprisonment from Six to Ten Months, to be commuted to One Half of the original Period of Imprisonment.

The foregoing Clauses and Remarks relate exclusively to making, possessing, or uttering Forgeries, or Implements of Forgeries.

The other Clauses in this Code respecting Documents embrace other Offences against Documents.

All that I can find upon the Subject of these other Offences are in Clauses 451 and 452 of Chapter 20, and Clause 223 of Chapter 11, which relate to destroying, defacing, and effacing of the Documents, and Clauses 453 and 454 of Chapter 20, and Clause 388 of Chapter 19, which relate to opening and misappropriating Letters, Packets, &c. These Offences in the first mentioned Clauses (451, 452, and 223,) may be comprised into Two Classes.

First. The destroying, defacing, obliterating, altering, or any other illegal and fraudulent tampering with or Appropriation of Documents of specific Value, or affecting Property of specific Value, such as Bonds, Promissory Notes, Bills of Exchange, Grants, Wills, Receipts, and all other Vouchers and Documents involving Property, whether of a public or private Character, whether in possession of Individuals or lodged in public Courts or other public Offices.

Second. The destroying, &c. of public Records or private Papers not of a specific Value, or not affecting Property of any specific Value.

The Clauses I have referred to do not appear to provide for public Documents of the First Class, or for Documents in general of the Second Class. Clause 223 of Chapter 11, and Clauses 451, 452, 453, and 454 provide each for a specific Act ; but there is no general Provision embracing the aggregate Mass of the different Species.

With respect to the Punishments, I do not perceive the Principles on which those prescribed in Clauses 451 and 452 of Chapter 20 are founded, while Clause 451 leaves the Judge at liberty to award Fourteen Years in the Case of a Will, perhaps not involving more than Twenty Rupees Worth of Property ; Clause 452 leaves it to his Discretion to adjudge no more than Three Years in case of a valuable Security, which may, perhaps, embrace Property of upwards of a Lac or Two, or to any Extent ; and the Imprisonment in Clause 223 seems to me to bear no Proportion to the Amount of Fine, for Three Months Imprisonment would not be considered by many Offenders as anything in comparison to a Fine of 500 Rupees.

I would propose that the Measure of Punishment for the First Class, of which Description the Cases noticed in Clauses 451 and 452 may be especially said to be, should depend upon the Amount of the Property involved in the Document on which the Fraud is committed.

With reference to the Offences mentioned in Clauses 453 and 454 of Chapter 20, and Clause 388 of Chapter 19, I have to observe,—

First. With reference to Clause 388, that I think a Discrimination should be made between the Misappropriation of a Letter or Packet and “*anything* contained therein.” The Thing contained therein may be of considerable Value, while the Letter or Packet may be of none. The Punishment for either or both in this Clause is from Three Years to Six Months Imprisonment, without reference to the Circumstance alluded to. I am of opinion that an express Provision should be made in the Clause referred to, that if the Packet or Thing contained in the Letter is of the Nature of Property, or of an intrinsic Value, the Misappropriation of such a Thing should be brought under the Head of Theft, and disposed of accordingly ; but if the Thing enclosed is of no intrinsic Value, the Misappropriation of the Letter, &c. may be brought under the Head of the Second Class of the Subdivision referred to, and punished accordingly, the Measure of Punishment proposed being sufficient to take in the additional Circumstances of Aggravation referred to.

Second. Clause 453. I have no Objection to the Penalty prescribed in Clause 453, for the mere opening of a fastened Letter or Packet ; but the Fine should be limited. Clause 454. I consider

consider the Imprisonment prescribed in this Clause to be too limited. I think it ought to extend at least to Eighteen Months.

I have a Doubt whether the Instance in the Illustration (e) annexed to Clause 441 can be considered a Case of Forgery, with which it is classed.

CHAPTER XXI.

Of Offences relating to Property Marks.

The Offences specified in this Chapter seem to be already provided for under the Head of Cheating.

Clauses 456, 458, and 459, considered with reference to their Illustrations, come clearly under the Head of Cheating or Fraud ; while Clause 457, with reference to its Illustrations, is no less than Forgery. As my Suggestions under the Heads of Cheating and Forgery comprehend all the Acts contemplated in this Chapter, I have no further Observations to make respecting them.

CHAPTER XXIII.

Of the Criminal Breach of Contracts of Service.

I observe that this Chapter has for its Object Contracts of a special Description, different from the general Cases of Servants and Masters, which latter has not been provided for anywhere, though nothing is more necessary in this Country than a special Law respecting Servants, and upon the same Principles, with certain Modifications, as the English Law.

The Reason assigned for this Omission in Paragraph 7, Note P, is, that " good Masters " are not in much Danger of being voluntarily deserted by their menial Servants, or that " the Loss or Inconvenience occasioned by the sudden Departure of a Cook, &c. would " often be of a very serious Description ; " and it is also apprehended that the " making " of those petty Breaches of Contracts Offences would not give Protection to good " Masters, but Means of Oppression to bad ones."

The Inconvenience referred to may not be great in Calcutta, but it certainly is in many other Places, and under special Circumstances ; and though there is much Truth in the last Observation, there being bad Masters can be no good Reason for affording Impunity to bad Servants.

The Law is open to both, and both should be rendered equally liable to the Consequences of their Conduct. There may be Cases in which not mere Inconvenience, but Consequence of serious Nature, is likely to result. As, for instance, a Native Nurse deserting the Infant she is hired to suckle, or refusing to proceed with it to some distant Place, especially after the Child has taken a Fancy to her, and will not take the Breast of another. There are not Instances wanting of such perverse Conduct in Servants.

I think the Punishment for the Offence in Clause 463 extremely lenient. The running away of Palankeen Bearers in the Middle of a Stage, and the throwing away of a Person's Luggage, are Offences of particular Atrocity, and not of unfrequent Occurrence in this Country, by which Travellers are subjected to great Distress and Inconvenience, to say nothing of the great Liability of the Property thrown away to be stolen and lost.

I am of opinion that for these Two particular Cases the Punishment should be proportioned to the Degree of Inconvenience or the Consequences resulting from the Offence. Should the Offence be attended with Loss or Damage of Property, or any aggravated Inconvenience to the Traveller, the Punishment should be not less than Six Months Imprisonment with Hard Labour in Irons, and ought to extend to One Year, with a Fine of from 50 to 200 Rupees, to be commuted to One Half of the original Period of Imprisonment.

In Cases similar to those referred to in Illustration " C " of Clause 463, provided the Offence is not committed in the course of the Journey, but before its Commencement, the most fit Penalty, I think, would be a Fine of twice or Three Times the Amount of the Contract, or Imprisonment until it is paid or realized, not to exceed, however, Three or Four Years, which Period will not appear excessive when it is considered that the Contract may sometimes extend to a very large Amount, say 500 or 5,000 Rupees or more.

The Illustrations refer only to Cases of Palankeen Bearers and Coolies running away in the Middle of the Stage. I think also that a Provision should be made for the refractory Conduct of the Bearers and Coolies refusing to proceed to the full Extent of the Journey contracted for, or to perform a Contract once entered into. In such Cases the Penalty, I think, should be a Fine equal to or double the Amount of the Contract, or such Sum as the Engagement of fresh Coolies or Bearers may cost, according to established or customary Rates, with Imprisonment till the Amount is paid, but in no Case of a similar Nature exceeding Four Months.

I see no Objection to the Punishments in Clauses 464 and 465.

Of Offences relating to Marriage.

This Chapter does not embrace all Offences relating to Marriage which are productive of real injurious Consequences to Individuals. Of this Sort are specially,—

First. Bigamy or Polygamy.

Second. Fraudulent Marriages between Parties of different Castes.

Third. The seducing another Man's Wife by the usual Arts of Seduction.

Fourth. The forcible Seizure and carrying off of another Man's Wife, with the view of seducing her, or withdrawing her Fidelity to her Husband.

Fifth. The performing, by any Person authorized or competent to perform Marriage, the Ceremony of Marriage, knowing at the Time that One of them is already duly married, or that One of them is of a different Caste, whose Union would be productive of Confusion, Defilement, and substantial Injury to one or the other, or that there is some other serious and important Objection to such Union.

Sixth. The sowing of Disunion and Discord between Man and Wife, with the malicious and wicked Intention of causing a Separation between them.

With respect to the First, Second, and Fifth Items, I would propose that the Acts therein referred to should be determined to be an Offence or not, as regards Europeans and Christians in general, by the Laws and Usages of England; and as regards Hindoos, Mahomedans, and other Castes, by their respective Laws and Usages. That for this Purpose such substantial Parts of the English Law as render Marriages or the solemnizing of Marriages objectionable or otherwise should be introduced into this Code, with any Modifications that may be found necessary and proper; and that similar Parts of the Hindoo and Mahomedan Laws should be collected and made a Part of the Code. I am of opinion that this is essentially necessary to render the Code complete; and that whatever Appearance of Difficulty the Task may seem to wear, it is only so in Appearance, being, in my Opinion, perfectly easy of Accomplishment.

As to the Laws and Usages of other Castes or Tribes to whom the English, Hindoo, or Mahomedan Law is not applicable, I see no Difficulty whatever in such Usages and Laws being ascertained, whenever Cases may occur in which they may be Parties; and such Laws and Usages may, as they are ascertained, be inserted in the Code as the future Law in such Matters. At any event, without Provision for all such Cases the Code cannot lay Claim to the Character of a Law complete as far as practicable.

With respect to the Third, Fourth, and Sixth Items, there can be no Question as to the Criminality of the Acts referred to in them, which, like Robbery and Theft, have no excusable Circumstance, as in Polygamy or unlawful Marriage, where the long Absence of One of the Parties at some unknown Place, the Uncertainty of his or her Existence, the Ignorance of some Law, &c., may exist to palliate or altogether excuse the Act. The Proof of Guilt of course rests upon Circumstances, which, by showing the Endeavours and Contrivances of the Accused, will determine the Extent of his Guilt.

The First Clause (466) of the Code seems applicable to the First and Second Classes of Offences, though from the Paragraph of the Note q it would appear to have in view only Cases of Bigamy.

The Third, Fourth, Fifth, and Sixth Offences are not provided for.

As far as the Reasons assigned in the Note q are applicable to the Third Class, they are not, in my Opinion, sufficient to justify the Omission of a Punishment for the Crime of Seduction.

Since such is my Opinion, I feel an Obligation in me to expose the Fallacy and Weakness of the Reasons referred to; and therefore I hope I shall be excused for saying so much upon this Subject, though not more than necessary or called for.

The following Reasons are given for the Omission:—

First.—“ That there is no Advantage to be expected from providing a Punishment for Adultery (I shall call it Seduction), because of Two Classes of People into which the whole Population of India is said to be divided, one (the higher Class), whose Feelings of Honour are painfully affected by the Infidelity of their Wives, will not apply to the Tribunals at all, and the other, whose Feelings are less delicate, will be satisfied by a Payment of Money.”

Second.—“ That some Classes of the Natives of India disapprove of the Lenity with which Adultery or Seduction is now punished, it being apprehended that among the higher Classes in this Country nothing short of Death would be considered as an Expiation for such a Wrong, the present Punishment being looked upon by them as absurdly and immorally lenient.” This, therefore, is considered a strong Argument against punishing Adultery at all; that is, it ought to be punished very severely (to the Extent, it is presumed, that would please the Natives, viz., with Death), or not at all.

Third. “ That Seduction is merely an immoral Act.” By which is meant, it is presumed, that it is not a proper Subject for a Place in the Penal Code.

With respect to these Arguments I have to observe, that they are founded upon Premises obviously uncertain, and supposing them otherwise, clearly inconsistent with the only legitimate Principles by which the Necessity or otherwise of a Law, and the Nature of the Law, ought to be determined.

In the first place, the Opinion that Adultery or Seduction is an Act merely immoral in the Sense referred to is undoubtedly a Mistake ; for, as observed in another Part of the same Note, " the dearest Interests of the Human Race are closely connected with the Chastity of Women and the Sacredness of the nuptial Contract ; " while the Breast of many an injured Husband, whose Peace of Mind has been destroyed, and whose Life has for ever been rendered miserable, bears witness that Seduction is an horrid Crime—the very Essence of Crime,—often accomplishing in One Act what a Multiplicity of Offences may not produce, the Destruction of a Man's Happiness.

Secondly. The Premises set forth, viz., the Unwillingness of a comparatively few Natives to resort to Law, from their considering the Punishment too lenient, and others seeking only a pecuniary Compensation, are not uniformly and immutably true. From the Note itself it appears that even the Case of the higher Class of Natives is not without Exception ; for it is observed, not that not One of them resorts to Courts, but only " scarcely any ; " and Experience and Inquiry bear out to the Fact, that the Natives are not altogether so reluctant to seek Redress at Law as is here assumed. But supposing that there are a few Natives averse to resort to Courts, it is certainly not a sufficient Reason to exclude from Consideration the great Mass of People, among whom are Europeans, East Indians, and other Christians, who do not consider that there is any real Disgrace or Dishonour, but rather a Duty due to Society, in bringing to public Justice an Offender deserving of exemplary Punishment for committing an Offence so prejudicial to Individuals and dangerous to Society.

Whilst it is thus evident that there are People enough to hail and resort to a Law in such a Case, it is evident that neither the Reluctance of the higher Classes to avail themselves of such Law, nor their Dislike of the Lenity of the present Law, or any Law which the Legislature may in its Wisdom think proper to enact, nor the mercenary Object of the poorer or lower Sort, is any good Reason whatever why a Law should not exist providing for the Crime.

All and every one of these Reasons are inconsistent with the only Principles which ought to influence the Legislature : viz.

First. Their Duty to provide a Law where there is a Crime, that their Tribunals of Justice may be prepared to meet the Offence whenever or whichever Way it may come before them, whether there be or be not some who may not wish to avail themselves of it, the Feelings of a few being no fair Ground for depriving the rest of a Safeguard of their Rights.

Second. The Fitness of the Law for the Purpose intended, viz., to deter the Commission of the Crime, that being the sole and legitimate End of all Law, without Regard to the vindictive Feelings of one Class, or the mercenary Views of another, both which have evidently the objectionable Motives of unbounded Revenge and unlawful Gain. Nothing is more obvious than these Two Things ; one, the Impossibility of framing a Law capable of pleasing everybody ; and the other, that in framing a Law its Effect on the Criminal is more to be consulted than the excited or vindictive Feelings of his Accuser or the injured Party ; for it is by the former alone that its Object is attained, the Prevention of Crime ; while the latter could never be reasonable further than the former should extend. To determine the Degree of Punishment is therefore the Province of the Legislature alone, with reference to a reasonable Expectation of its Effects.

I trust what I have said is sufficient to show the Necessity of a Law for Seduction, the Practicability of framing one applicable to all Classes, and the Insufficiency of the Reasons assigned for the Omission of such Law in the present Code.

It will be perceived that the Punishment I propose in a Case of Seduction is applicable exclusively to the Seducer, and not to the Object seduced, who cannot but be considered merely as the Prey of his Villany, and whose Loss of Character, Caste, and all the Privileges of Society, together with the Misery which the seduced Victim in 99 out of 100 Cases is soon after generally subjected to, by the Contempt and Maltreatment of her Deceiver, are more than adequate Punishment for her Imprudence and Weakness. In this respect, therefore, I fully concur in the Sentiments expressed in the last Paragraph of the Note q.

There can be no Doubt but that the Fourth, Fifth, and Sixth Classes of Offence are likewise of an atrocious and wicked Description, calling for express Provisions of Law.

I have no Objection to the maximum Punishment prescribed in Clause 466, assuming it to be intended for Cases of the Nature referred to in the First and Second of the Classes mentioned by me ; but the minimum Punishment should not, in my Opinion, be less than Seven Years. The Fine should in this Instance be left discretionary to the Judge, to be fixed according to the Circumstances and Condition in Life of the Party injured, Three Parts or the whole of the Fine to be paid to the injured Female, as a Satisfaction of the Injury. The Fine, if not realized, to be commuted to Imprisonment of One Fourth of the original Period, if for any Term of Years. I think that it would be an Improvement if this Clause should be rendered more explanatory and definite by a specific Mention of the particular Sorts of Delinquency for which the Punishment is intended.

With respect to Clauses 467 and 468, I would say nothing respecting them at present, but would leave it to Time and Experience to decide the Necessity and Expediency of them.

For the Third Class, Seduction of a married Woman, I would propose Transportation for Life as the maximum Punishment, and the Minimum to be not less than Ten Years, with a Fine, to be determined by the Circumstances and Condition in Life of the injured Party, but in no Case to exceed 20,000 Rupees, to be commuted, if not realized, to One Sixth of the original Period of Imprisonment.

For the Fourth Class, the maximum Punishment I think should not be less than Seven Years, and the minimum Four, with Fine not exceeding 2,000 Rupees, to be commuted to One Fourth of the original Period of Imprisonment.

For the Fifth, it is my Opinion that the Punishment should be precisely the same as that for the First Class, for it is the fraudulent Union that constitutes the chief Part of the Crime, and leads to all its subsequent Consequences.

For the Sixth Class, Imprisonment from Six Months to Three Years, with a Fine from 100 to 600 or 800 Rupees, appears sufficient, the Fine to be commuted to One Third of the original Period of Imprisonment.

CHAPTER XXV.

Of Defamation.

This Chapter does not appear to require any Remarks. It is founded upon Two substantial Principles ; one, that the Defamation or Imputation should be such as to be calculated to injure a Person's Character and Condition in Society ; and the other, that the Charge or Accusation should be false. And I fully concur in the Reasons advanced in the Note R for this latter Provision, though different from other Laws and Opinions. I have only a Doubt as to the Adequacy of the Punishment, but will make no Observations respecting that Point, leaving it to Time and Experience to point out the Necessity of an Alteration in that respect. I would, however, I think, add, that the Penal Law should be no Bar to the injured Party seeking the Recovery of any Damage or Loss actually sustained by a Civil Action.

CHAPTER XXVI.

OF CRIMINAL INTIMIDATION.

Insult and Annoyance.

With respect to mere Intimidation, the Criminality of the Offence appears to me to be of a twofold Nature ; one, the Insult offered by the Threat ; and the other, the criminal Intention of committing a certain Offence betrayed by the Offender.

I am of opinion that the First, as a real Offence, should be punished with the same Penalty as for Insult ; that the Second, being merely an Expression of an Intention, which in many Cases may not be seriously entertained, and it will be difficult to know when the Intention is serious or otherwise, does not, I think, deserve any actual Punishment, but will be sufficient to be provided against by Securities for a certain Period, in addition to the Punishment for the Assault ; assuming, however, that the Intimidation had not the Effect of inducing the Person threatened to do any illegal Act.

With reference to Clauses 485 and 487 (assuming them to allude exclusively to Offences of the Nature described in the Illustrations annexed to them), I do not perceive any essential Difference in the Offences alluded to in them to require a Difference in the maximum Punishment, which, I think, may, in both Cases, be Three Months, with a Fine not exceeding 100 Rupees, to be commuted, if not paid or realized, to further Imprisonment to the Extent of One Half of the original Period. In the Case contemplated in Clause 486, the maximum Punishment need not, I think, exceed Six Months as regards Imprisonment, and 200 Rupees as regards Fine, to be commuted to One Third of the original Period of Imprisonment.

(Signed) P. SHARKEY,
Principal Sudder Ameen.

Enclosure 8. in No. 78.

(No. 56.)

OBSERVATIONS of J. F. THOMAS Esq.

28th June 1838.

Paragraph 1. In endeavouring to fulfil the Instructions of the Judges, which require " any Information in my Power upon any of the important Subjects to which the Code " relates," and that " any supposed Defects " " should be pointed out, and Improvements " suggested," I am fully sensible of the great Difficulty of the Task, and I offer, therefore, with much Deference, the following Observations, first, on the Code generally, and, secondly, on particular Provisions in the Order of the Chapters, and on some of the Views expressed in the Notes.

2. Looking

2. Looking upon the Code as a whole, and as a Substitute for the existing Regulations, I consider it chiefly valuable as a Compendium of the latest and most enlightened Views of Penal Jurisprudence, applied with much Judgment to the Wants and Circumstances of India. The extensive Use of pecuniary Penalties, *with the important Object of rendering them the Means of indemnifying Parties injured*, the Chapter on Abatement, and the Introduction of the discriminating Principle of the French Code in Cases of Perjury, are a few of the Instances of great and highly valuable Improvements to which I allude. There is also a Comprehensiveness in the Definitions of Offences which will, I think, do much to remedy an Evil of the present System, under which Crimes may either be committed with Impunity, or are only brought within the Jurisdiction of the Courts under some uncertain Provisions of the Mahomedan Law (Section VII., Regulation X., 1816), unknown to the Officers presiding in the Courts, and which ordinarily annex the arbitrary Penalty of Oookoolut, leaving it therefore discretionary with the Courts to adjudge any, or little, or no Punishment. This Evil cannot exist under the new Code, whilst the Comprehensiveness of the Definitions will also render the constant Interference of the Legislature and frequent Additions to the Penal Laws unnecessary.

3. The entire Abrogation of the Mahomedan Law, relieving the Criminal Jurisprudence of the Country from a barbarous Incumbrance, will also be found a most important Improvement, and I consider the Code on the whole well calculated to form the Basis of a greatly improved System. It is, I am of opinion, capable of being at once made Law in the Provinces, and substituted, with but little Modification, for the present Regulations of the Government.

4. Whether it will be a desirable Substitute for the Criminal Law administered in the King's Court, no Opinion is offered; but I may be permitted to make One Remark, that whatever may be the Objections to its Provisions in regard to British-born Subjects, I can entertain no Doubt, from the Experience gained by sitting frequently on the Grand Jury, that it will be found far better adapted to the Native Inhabitants living within the Jurisdiction of the King's Courts than the System now administered amongst them.

5. The great and leading Defect of the Code, still viewing it as a whole, and with reference, as we must, to its Administration by Native Officers, appears to me to be chiefly in this, that it is too abstract,—not sufficiently simple for the native Mind. It requires a higher Education, more Reflection and Reasoning, more Acquaintance with the general Principles of Jurisprudence for a correct and ready Application in Practice of its Principles, than the Native Officers of Police will generally be found at present to possess, and a faithful and close Translation (the only one admissible of the Laws of a Country) would, I fear, be wholly unintelligible. The Code in its Native Dress would fall, therefore, under the Condemnation of the Commission itself, and be at variance with the First Principles of sound Legislation, for it would convey in fact “no Meaning to the People.” (Preface, Page 7.)

6. But this Defect does not touch the Principles of the Code, and is perhaps easily susceptible of Remedy. The Proposition made to the Fouzdarees Udalut some Years back by the present Third Judge of the Court, to sanction a plain and well-digested Body of Rules drawn from the Regulations and the Circular Orders of the Court, for the Guidance of the Native Officers, would, I think, if carried out in regard to the Code, fully meet the Case. I am aware that this was objected to at the Time by the Fouzdaree Court; but if the Law itself is correctly given in these Rules, and the Code remains in all its Integrity in the Original, and the English is the sole ultimate Rule by which the Courts are governed, I am unable to see why such of its Provisions as concern the Native Officers may not be correctly given in a different Form in their own Language, and by Paraphrase and additional Illustrations be made simple and intelligible to all Classes of Natives, without lying open to valid Objection. A Manual, containing the Rules of the Code, with such subsidiary Illustrations and Explanations, would probably meet the whole Difficulties of the Case. It might be in the Native Languages alone, or the original Law in the English on one Page, and the Translation, Explanation, and additional Matter in the Native Language on the opposite Side, and should be framed and issued under the Authority of the Law Commission, or of the Sudder Court of each Presidency.

7. As the Code now stands, I believe it to be impossible for a Translator to find Terms to convey the full Sense of some of its most important Provisions, unless he paraphrase very largely, which will in effect make him, and not the Law Commission, the Legislator. The every Day Offence designated in the Code as “Lurking House Trespass,” or the Definition of stolen Property in Clause 389, I should cite as Instances in point, not susceptible of exact Translation, and it will require probably a lengthened Explanation to convey the full Intent of the Terms used to the Native Officers. This, I am of opinion, should be the Duty only of the controlling Authorities, and I know no Course so practicable as that of the subsidiary Rules and Explanations proposed.

8. Another Defect which runs throughout the Code, doubtless unavoidable in part, is the large Discretion given to the Courts as to the Measure of Punishment which they may inflict. The Penalty of unlimited Fine, so frequently provided, gives the Courts enormous Power, open to great Abuse, over the wealthy Classes, who would suffer anything rather than the Degradation of Imprisonment in the Common Gaol. In numerous Instances also Imprisonment may be either for Two or for Fourteen Years for the same Offence; Penalties of very different Measure; to which may be added unlimited or the

most trifling Fine; and it is now left optional with a Judge to impose the one or the other. This large Range of Punishment precludes for the most part the Consideration whether the Penalties in the Code have been duly apportioned to the Offences; and the accurate Adjustment of Penalty to Crime, and Degrees of Criminality, has been too often consigned, I think, to the executive Officers.

9. It does not appear whether the Code of Procedure will practically modify this, by enacting that Courts of certain Grades shall only inflict a certain Amount of Punishment, and have the final Cognizance only of certain Grades of an Offence, and by this Means the Discretion now apparently given be practically limited; but if not, the Code should, I am disposed to recommend, be modified, by a Classification of the different Grades of an Offence, with proportionate Penalties.

10. I do not consider the Right of Appeal, which it appears from the Notes, Page 6, it is intended to provide, a Security of any Value against an Abuse of this large Discretion. It will be found, I fear, in Practice, productive only of still greater Evils; for an Appeal in a Criminal Case in this Country, if it is to re-open the Case for further Examination, must lead to most extensive Perjury; and if it consists only in the Substitution of the Judgment of a controlling Officer on the same Matter and Facts, who is in the higher Court, not as in England from tried Ability, but from the mere Circumstance of Seniority or better Interest, it must as often happen that the Judge on the Spot, who knows the Circumstance of his District and the Necessity for checking particular Crimes, will be more competent to decide what is and what is not an excessive Fine or other extreme Penalty than the controlling Officer.

11. It would, I am of opinion, therefore, be a great Improvement in the Code if both the different Grades of Offences and of Offenders should be marked out, and higher Penalties upon them made *obligatory*. It appears to me, for example, that it should not be optional with a Judge, as the Code now leaves it, to inflict on an habitual Receiver of stolen Property, who may often be the most dangerous Member of Society and one of the most hardened of Criminals, a very trifling Punishment, a Fine possibly of trifling Amount, as authorized by No. 390; but that the Legislature ought in this, and in similar Cases where the Offence lies at the Root of Crime, or where the Offender bears such a Relation to the Party injured that the Offence in him is Evidence of greater Delinquency, and more deeply affects the Security of Person or Property, as Theft by a Servant, a Village Watcher, or where he is an old Offender, &c.,—that in such Cases the Law should specifically provide for the Infliction of the highest Penalties; not leaving it to individual Judgment.

12. Without such Provision the Code must fail in One of its leading Objects; for if Offences of all Shades, coming under One common Designation, and Criminals of all Classes who commit them,—the old and incorrigible Offender,—the Youth overcome by sudden Temptation,—may by Law be punished alike, either by Two or by Fourteen Years Imprisonment,—by a Fine of a trifling or unlimited Amount,—at the Will of each Judge, instead of the Uniformity expected from the Code, each Presidency and adjoining Provinces may exhibit an Administration of Criminal Law widely differing in Character.

13. The Code is, I think, also chargeable with Over-legislation, and Cases are provided for which might safely be left to the Common Sense of the executive Officers in carrying out the general Principles of the Code. (See Clauses 72 and 73, with the *Illustrations*.) This Over-legislation, to give a specific Instance, is perhaps most strongly marked in the Chapter on Offences against Religion. It appears to me a dangerous Novelty, liable to extensive Abuse, that a Man should be subject to a Criminal Prosecution for every Gesture or Sound that he may utter offensive to the religious Feelings or Prejudices of another. There can be no Limit to Criminal Prosecutions, nor to the Variety of Sentences. Under Clause No. 282, one Judge may in his Charity assume that there could be no “deliberate Intention” of wounding the Feelings, and so absolve all Offenders; another may adopt the Maxim, that the Act itself indicates such Intention; and if the Criminal Courts are to be at all Times open to the Zealots of differing Sects on every trifling Occasion, the Result must be to foster Bigotry, and to keep the religious Animosity of Sects at its Height, as well as to interfere with individual Security and Peace. I give, as an Instance of the Evil which might result from the Law, a Fact at one Time constantly under my Notice. The old Samete Pandit, Sudder Ameen of the Combaconum Court, in his daily public Lustrations in the Carceri, poured Abuse on Vishnu, and might consequently have been brought before me as a Criminal for an Act little regarded by any but a few Zealots like himself, and which he deemed a religious Duty.

14. My Experience also of the Bigotry and keen Hatred of the opposing Vaishnava Sects of Serunggam, the Tengala and Vadagala of the opposing Mahomedan Sects, Soonees and Sheeas, of Masulipatam and elsewhere, and their ready Recourse to the Courts of Law as a Means of mutual Annoyance, would lead me strongly to deprecate this Provision. I greatly doubt its Justice also; for under it both the Christian and Mussulman would be subject to Penalty for the undisguised and natural Expressions of their Views of the Evil and Folly of Idolatry.

15. In India, as elsewhere, there is but One Rule, I believe, for dealing effectively with religious Opinions; to grant to each Sect the free Exercise of its Religion, and to place the least possible Restraint on all Parties. The Code, in my Opinion, goes beyond this;

this ; and the Attempt to repress every offensive Gesture and Sound by Penalties will, I am of opinion, only be found needlessly to inflame the bad Passions of Persons heated by religious Intolerance ; for such Feelings Experience has proved are not ordinarily repressed, but strengthened and deepened, by Restraints and Penalty. I should consider it a great Improvement in the Code if novel Rules of this Nature were removed on its Promulgation, and their Necessity be first made manifest by Experience, before the Legislature proceeded to make them law, and thus to declare Acts which may be and are in themselves ordinarily harmless Criminal Offences.

16. The Commission have also, I think, overlooked at Times the permanent Interests of Society, making that criminal which is in its general Tendency and Result highly beneficial to Society. Of this Character there is One Member of the Provision No. 284 which renders it penal to treat a Man's Views of Caste lightly. If Caste were in itself a common Blessing let it be protected, as is here done, by penal Enactments ; but if, on the other hand, it is in itself an Evil,—if it is better for Society that it should gradually disappear,—it must be a mistaken and narrow-minded Legislation which would buttress it up by penal Enactments. Penal Enactments should only, in such Cases, I conceive be made when it was practically apparent that the Injury provided against pressed so greatly on the present Comfort and Security of the Community that the ultimate Benefit must yield to present Exigency. But to afford the Protection of a penal Provision to what is in itself injurious to Society, and to the Man who knows so little of his Caste, or is so indifferent and careless about it, that he can be led to do in his Ignorance that which shall cause him to lose it, appears to me needless and uncalled for Legislation. Where the Peace and Well-being of Society has not hitherto suffered (as is the Case in this Presidency, so far as I am aware,) from the Want of a penal Provision protecting Caste, I should recommend that it should take its Rank with Slavery, or any other special Right or Privilege, and the Possessor be left, as heretofore, to the *Civil* Courts for the Maintenance of his Rights.

17. I have deemed it generally unnecessary to make any Remarks where my Sentiments, so far as I am enabled to form a Judgment on the Points discussed, accord with those of the Commission. But there are a few Cases on which it may perhaps be desirable to record an Opinion. I entirely and fully concur with the Commission in the Propriety of restricting the Penalty of Death to the single Offence of Murder. My only Doubt is in the Case of a Criminal transported for Life effecting his Escape and Return by a violent Assault upon his Guards. It may be possible that Death is the only Punishment which will be found sufficient to check this Offence, and secure the Guards from repeated desperate Assaults upon them, and consequent Injuries.

18. I entirely concur also in the View taken of the Evil and the Inexpediency of degrading public Exhibitions as Part of the Penalty. Such Exhibitions do not, I am of opinion, tend to repress Crime, and they are open to the strong Objections urged against them. I would wish that some Rule might be laid down which should render the Execution of the Sentence of Death more solemn and imposing than it now is, and would on this account desire to see the Rule of the Fouzdarce Udalt Circular Order, 23d February 1835, making the Burial of the Body at the Foot of the Gallows Part of the Sentence retained.

19. The Intention expressed by the Commission of framing the Law of Criminal Procedure (see Notes, No. 10.) “*so as to facilitate the obtaining of Reparation by the Sufferer, and to make One Trial do the Work of Two,*” will, I trust, be realized. It will be a most important Improvement. I will also venture to express a strong Opinion in favour of the Proposition (Notes, Paragraph 43.) for constituting false Pleading a penal Offence. I consider the Arguments in favour greatly to preponderate over those on the opposite Side, and I believe that it will be found in Practice a most valuable Provision ; one of the best, if not the only Safeguard, against a very prevalent Abuse in India, — the converting the Courts of Law into Engines of Oppression and Injustice. I will not lengthen these Notes by any further Observations, but will now proceed to the Consideration of the different Chapters in detail.

I would suggest the Addition to this Chapter, of an Explanation of the Exception* which declares “*Harbour given by the Husband, Wife, or Relation in the direct ascending or descending Line, or Brother or Sister,*” to be no Offence (see Clause 107, Page 27, and 256, Page 54, &c.) These Relatives should, I think, be once distinctly specified, if this Provision is to stand in the Code.

Chapter
Explanation.

I will here remark, that this Provision, taken from a Code enacted for a different State of Society, is, I am inclined to think, only in part applicable to this Country. I would retain the Exception as regards the Husband, and the Wife, the Mother, the Daughter, and the Sister by whole Blood ; but I should not retain it in the Case of Brothers or Sisters by Half Blood, nor even in the Case of Father and Son, Grandfather, Grandson, nor of Brothers, unless it was satisfactorily established that these Relatives were themselves wholly free from Suspicion, not only in the special Case in which they harboured, but that their Characters and Habits were at all Times those of honest Men,

* This Provision does not extend to the Case in which the Harbour is given by Husband or Wife or Relation in the direct ascending or descending Line, or Brother or Sister of the Person to whom the Harbour is given.

constituted as Society is in India, where whole Castes, as Cullers and Marawars in our Southern Provinces, Coomimbars, Cochawars, &c. elsewhere, are by Birth Fraternities of Thieves and Plunderers, where each Member of a Family is at all Times ready to join his Relation in Robbery or Theft. If the Father, Brother, &c. is allowed to render to his criminal Relative this Assistance ad libitum, we shall greatly diminish the Security of Person and Property.

The Rule in Europe, where Polygamy and lawful Concubinage are unknown, is also confined to more narrow Limits than in this Country; and from the Usages of Society in India generally, as the very early Marriages of Children, it may be doubted whether it is correct to assume that Families are as closely united as in Europe, especially in the Case of Brothers or Sisters of the Half Blood, and whether, therefore, it is desirable for the Legislature to relax its Strictness, to give Scope to the Exercise of Affections which, under the existing Institutions of the Country, can have little or no Existence. I would therefore suggest a Modification of the Rule; at all events a clear Explanation, stating the Individuals to whom it applies.

Chapter II. Of Punishment. Flogging.

The great Peculiarity of the Code on this Head,—the entire Omission of Flogging as a Penalty,—I consider, in the present State of this Country, a Defect. Its Efficiency as a Terror to others, when inflicted in public on the old depraved Offender, and its Influence in checking a Course of Crime, over every other Species of Punishment, when inflicted on the young Criminal of the lower Classes, is, I believe, unquestionable. These Benefits to Society,—the last of great Importance,—are now lost. The Omission is not supported, so far as I can see, by any stronger Reason than that the Government has already abolished Flogging. The other Arguments used in the Notes, Pages 12, 13, prove nothing against a judicious Use of this Species of Punishment, but only that there are Cases where it would be an aggravated Punishment, and ought not to be inflicted. I cannot consider the Objection that it is a *cruel* Punishment of the least Force, when both the Number of Stripes and the Instrument are regulated by the Law, as in the present Regulations of this Presidency. I am at a loss also to understand why the Legislature should refrain wholly from doing that which every Parent in his Family would do; and as it is not cruel, but right, in a Parent, to flog his Child moderately, so neither will it be an Act of Cruelty in the Government, nor will it be so viewed by the Common Sense of the People, to do the same by Male Offenders. It seems to me that the Commissioners would have made their Code more effective as a working System if, instead of altogether renouncing the Penalty, they had confined Flogging within its proper Bounds, and applied it where it would clearly be the best Punishment, both as respects the individual Offender and the Public. I concur entirely in the Views of the Commission (see Note, Page 13.) in deeming it inexpedient to authorize Flogging in the Case of Police Peons. I have known even the Imprisonment authorized by Section XI., Regulation XIII., 1832, Madras Code, induce respectable Men to throw up the Office of Gaol Peons; and it is certain that if we degrade any Class of Officers we shall never have any but the most disrespectful Members of Society holding the Office.

Imprisonment.

The Commissioners have themselves remarked, as a prominent Defect in the Code as it now stands, the great Length of the Terms of Imprisonment; and they express a Hope to be able to reduce them hereafter by a better System of Prison Discipline in this Country, in its present Condition, which shall greatly restrain Offences. The Legislature has to deal with a large Class of Offenders who in their ordinary Life know not the Comfort of a regular daily Meal, who live in wretched Huts, exposed Day and Night, with little or no Shelter, and who cannot or do not afford themselves either a Rag in the cold or a Cloth in the warm Season. The British Government will never subject Criminals under its immediate Care to Privations to this Extent. Do what we will, therefore, a Prisoner of the lower Classes is, and for a long Time will be, better fed, better clothed, better housed, and, in case of Illness, immeasurably better provided for, in Gaol, than when labouring for his Livelihood out of it. Criminals have also always One Day's Rest from Labour in the Seven, not known to the Labourers out of Gaol. The sole Resource for making Imprisonment dreaded, if we except, perhaps, Solitary Confinement, is therefore Hard Labour during Six Days in the Week, and that to be obtained through the Agency of Native Peons.

Hard Labour, even if obtainable, when persevered in for a long Period, is a somewhat dangerous Experiment upon a People of little or no Stamina, and may early require to be relaxed, in Justice to the Criminal sentenced only to Imprisonment. I see also no Ground to expect the same beneficial Results from Solitary Confinement amongst a People who can sleep with Ease Eighteen Hours in the Twenty-four, and who are nationally devoid of Energy, as when applied to a People like the Americans and the Criminals of Europe, of Enterprise and restless Character. It is, therefore, I think, highly problematical if any System of Prison Discipline which from its increased Severity shall call for a proportionate Decrease in the Terms of Imprisonment will ever be practically carried out. I should deem it far preferable, therefore, not to wait for this Event, but at once to remove from the Code this great Defect, and limit the Terms of Imprisonment in the Majority of Offences where Fourteen Years is now authorized to Ten or Eleven Years.

To a People who in Nine Cases out of Ten cannot compute Time, who know not whether their Children were born Ten, Twelve, or Fourteen Years back, nor their own Age,

Age,—when the Friends and Associates of a Prisoner cannot tell, in the Majority of Cases, whether he has been respectively Six, or Seven, or Ten, or Fourteen Years in Gaol,—the long Terms of Imprisonment provided for by the Code appear to me the inflictions of so much needless Pain, and, except in the Case of notorious Offenders, as Leaders of Gangs, or Persons detained on Security for the Peace of the District, an useless Expense entailed on Government. The only Notion of the Punishment the Criminal can now form is, that it has been a long Separation from his Home; and that Idea is as strong when the Imprisonment has been Ten as when it has been Fourteen Years. I almost think it indeed demonstrable, in the Case of Offenders of the uneducated Classes, who probably constitute Nine Tenths of the Criminals, that Six, Eight, and Ten Years are respectively as effective Penalties as Seven, Ten, and Fourteen Years; and that the Terms of Punishment now provided should therefore be reduced.

I would only leave the present Terms in the Case of Suborners of Perjury or Forgery, the Leaders of Dacoits, and similar Offenders of greater Criminality, or more raised in Society. If a System of Prison Discipline shall eventually be enforced which shall not increase the Mortality in Gaols, and yet be found to add so much to the Severity of Imprisonment as to make the Punishment greatly dreaded, then, in lieu of a Reduction in the Terms of Imprisonment provided in the Code, a Reduction might, I believe, safely be made from the more limited Terms here proposed; for a really severe Imprisonment of a few Years, if attainable, would, I am convinced, be found tenfold more efficacious than double the same Length of Imprisonment under the present System, especially in this Presidency, where the great and paramount Object of rendering Imprisonment formidable to the Criminal has been of late Years lost sight of, in Attempts to convert the Gaols into Manufactories, with the view of making some paltry Addition to the Revenues of Government.

I throw it out for Consideration, whether the Efficacy of Imprisonment might not be heightened by the total Seclusion of the Prisoner from his Family, and by excluding him from all Communication, not only with Relatives and Friends, but from all others but Prisoners, during his entire Imprisonment, when short; this to be effected by working him only in a Yard surrounded by a dead Wall, to which there should be a covered Way from the Gaol, and so ordering his Labour that during his whole Imprisonment he should see nothing but the Gaol Wall and the working Yard. I would also, to render the Gaol irksome, subject him during the last Six Months of his Term of Imprisonment, to severe extra Labour and Rigour.

There is One Portion of this important Clause* which appears to me to need Correction. The Right of private Defence is declared not to extend “to the inflicting of more Harm than it is necessary to inflict for the Purposes of Defence.” This I consider too indefinite, and it is not aided by the Illustration (b), that A, a powerful Man well armed, defends his Property by killing an unarmed Boy. The Illustration shows, not merely that A inflicted “more Harm,” it may be but little, or by some Degrees, “than was necessary,” but such as was obviously and wantonly unnecessary; and the Definition itself should, I think, be confined to this Class of Cases. At present there is too much Uncertainty in the Law. Judges must differ greatly when they have to determine the Point “that no more Harm than necessary” was done. I would make the Line broader and stronger, and would suggest that the Clause should run in these or similar Terms:—The Right of private Defence in no Case extends to the inflicting of Harm manifestly and clearly unnecessary to inflict for the Purpose of Defence. The Illustration in the Code will then stand.

Chapter III.
General
Exceptions.
Clause 75.

Thirdly. Mischief by Fire committed “on any Building or Tent used as a Human Dwelling.” I merely remark, in this Place, that the Code here, as in other Places, draws no Distinction between the Cochawán's or Vagrant's Hut or Tent of a few rude Boughs covered with a Comley or Mat, and the permanent Dwelling. This is, I think, a serious Defect, and may lead practically to great Injustice, to severe and arbitrary Punishments wholly disproportionate to the Offence, and not adapted to the State of Society. I would not give the Person who dwells in a Tent or in an open Hut the Right of slaying another in defence of such Property, which, if destroyed, might be renewed with possibly a few Hours labour, or at the Cost of a few Annas, and from which, even if set on fire, the Egress is immediate.

Clause 79.

Clause 94. † Will not this Clause open the Door to malicious Prosecutions, unless the Instigation be confined to some overt Act similar to those given in the Illustrations, and the Clause run, therefore, in this Form:—Whoever previously by any overt Act abets any Offence by Instigation, &c.

Chapter IV.
Abetment.

Clause 97. This Clause needs, I conceive, a slight Alteration, to prevent its including a Class of Cases it is not intended, I imagine, to include. If we substitute in the Illustration (C) Murder for Robbery, it would follow that Officers of Police, like the London Police Officer who remained at the Bottom of the Stairs to allow the Perpetration

* The Right of private Defence in no Case extends to the inflicting of more Harm than it is necessary to inflict for the Purposes of Defence.

† Whoever previously abets any Offence by instigating the Public generally, or any Number or Class of Persons exceeding Ten, to the Commission of that Offence, shall be punished with Imprisonment of either Description for a Term which may extend to Three Years, or Fine, or both.

of a Murder above to secure the Forty Pound Blood Money, should suffer Death for his illegal Omission to interfere at once, as he was bound to do, to prevent the Crime.

It is clear that the Officer in this Case, however indefensible his Conduct, and although his Omission probably led to the Murder being actually perpetrated, yet was not in league with and had no Intention of favouring the Offenders, which is the Essence of the Offence in this Clause; but his Act nevertheless falls apparently within the Definition of "*aiding*," by an illegal Omission in the Commission of an Offence. If there is this Defect in the Clause, it may be remedied by substituting "with the Intention of aiding and favouring the Offender in the Commission of that Offence."

Then the Illustration also would, in lieu of facilitate the Robbery, have, "favour the Robbers;" and thus Acts or Omissions, such as those of Spies joining with Gangs, and all Omissions pro tempore which, though they may aid the Commission of an Offence, are not done to favour the Offenders, but the reverse, would be excluded from the Operation of this Clause.

If there is any Weight in the Objection here raised, it may then perhaps be necessary to reconsider the wording in Clause 86 at the Head of the Chapter, "Thirdly*, &c.," where in like Manner the illegal Omission should be defined as done, "not to aid the Commission of the Offence," but to aid or favour the Offenders in the Commission of the Offence.

Chapter VI.
Of Offences
relating to the
Army and Navy.

From the Terms of Clauses 118, 119, the Words "Soldier," "Sailor," would appear to be confined to Men in the Ranks, and consequently, if the Assault, the Mutiny, or the Desertion, was the Act of an Officer, the Party previously abetting would not be punishable.

It is possibly only intended to provide for the Cases of the lower Grades of the Army, as all that is practically necessary; but it might still be well to define the Terms Soldier or Sailor, showing which Classes of Military and Naval Men they include. The Illustration to Clause 125 tends also to show that the common Man in the Ranks, and no other, is intended by the Word Soldier, and it will then follow that to wear the Garb of an Officer with the Intention to make others believe that he is such Officer is not punishable under Clause 126. Is this the Intention of the Law?

Chapter VII.
Of Offences
against the public
Tranquillity.

Approving generally of these Provisions, I consider them, as I do Regulation III. of 1831 of the Madras Code, unwise, and a great Source of Oppression, *when applied to Ryots* assembled to resist unusual or heavy Imposts. It is the only Mode by which the Ryots can, in the present Circumstances of Society, influence the public Authorities. They have no direct Access, as a Body, to the controlling Authorities; and if the Collector of a Province, who may be enforcing the most ruinous Imposts, is at liberty to construe any Assembly to oppose his Measures as an Attempt to overawe him in his public Duty, the People are deprived of all Remedy and Hope of Redress. Unless, therefore, the Ryots are armed, and use Violence to Individuals, they should not, in my Opinion, be held guilty of Rioting. The Tendency of the Law in this Presidency, where the Collector *and Magistrate* is the Judge in his own Cause as to what does or does not overawe him, is to prevent all Expression of public Feeling,—an Evil of great Magnitude; and there can be no Medium, whilst this oppressive Law exists, between unlimited Submission on the Part of the Ryot and Rebellions such as we have lately seen in Canara.

Chapter VIII.
Of the Abuse of
the Powers of
public Servants.

The Provisions of this Chapter, as made applicable to Men placed in Offices of the highest Trust and Responsibility, are questionable. I doubt the Policy of subjecting such Men to any further public Penalties for Malversation than Dismissal, with Censure and Disgrace.

It must, I conceive, degrade the Office, and the whole Class of Officers, and lower the Standard of public Character, if they are to be restrained by Penalties like those here provided.

The ample Remuneration, the Estimation of Society, and the Loss of these, can, it is admitted, alone maintain the Standard of public Character; and nothing, I am satisfied, will be added to these Sanctions, unless the Penalties are very severe.

The Removal of a British Resident at a Foreign Court, guilty of Malversation, from his high Post as Representative of the British Government, to the Common Gaol (see Illustration (C) at the Head of Page 37), will only prove injurious to the public Interests, by degrading the Office. It would be better, I should say, that he be dismissed with public Ignominy, and his Degradation and Punishment left solely to Society. In like Manner it will not uphold the Judicial Character, but, on the contrary, must tend greatly to its Deterioration, both in the European and Native, if, as provided in Clauses 142 and 143, Judges presiding over Courts of great Trust and Power may be brought *as Criminals* on Charges of the Nature contemplated in these Clauses, and sent to the Common Gaol for One or Two Years.

The Arguments the Commissioners have used respecting Penalties which consist in degrading Exposure &c. (Notes, Page 12,) appear to me to apply to the Cases under Consideration; for the Imprisonment provided in these Clauses of but One or Two Years would be a mere Subject of Mockery to "shameless and abandoned Men," but when inflicted on Men "who have filled the highest Stations, and maintained respectable

* Aids by any Act, or any illegal Omission, the doing of that Thing.

" Characters,

“Characters, would be so cruel that it would become more odious to the Public than the very Offences which it was intended to repress.”

This I am induced to believe would be realized, especially in the Case of Natives of Family and great Respectability, who might be taken from their Seats as Judges, and imprisoned, for some even trifling Irregularity to the Favour or Disfavour of a Party before them.

The Result would, I fear, be that such Men would avoid Offices which might subject them to such Degradation for Acts which would indeed be culpable, but which would be amply provided against by simple Dismission.

These Observations I intend to apply almost entirely to the *Imprisonment* provided for several of the Offences described in this Chapter. Fine *not commutable* by Imprisonment, but recoverable at any Time, lies open only in part to the same Objections.

In Clause 143* we have the Judge made amenable also for every Departure from the Law of Procedure. If he disobeys a Direction of no moment, or One of the greatest Importance, he is alike open to a Prosecution. There should be some Distinction, I conceive, made (Clause 147). If no Injustice has been done to any Individual, I should question the Necessity for making the Act of “trading” punishable by Imprisonment.

Clause 149. It might perhaps be found in Practice safer to provide, that, “if he be paid by Fees,” not exceeding One Twelfth of his *annual* Fees, thus giving One Month’s Fees on an Average. At present it stands, “Fees received in some One Month,” and a Month of extraordinary high Receipts might be taken.

Clause 161. In Practice it has always appeared to me that the Signature of the Individual himself to a Statement made before any public Authority is almost an unnecessary Form, when such Statement is attested by the public Officer. I should hold it quite unnecessary to impose any Penalty, beyond a very trifling Fine, for the Refusal to sign, and should declare the Attestation alone of the public Officer, accompanied by a Note *in his own Hand*, that a Party refused or declined signing the Statement, to be a sufficient Authentication, and that the Statement, so attested, should have the same Validity as if it had been duly signed by the Party. This would take away the Necessity of a Penal Enactment.

Chapter IX.
Of Contempts of
the lawful Authority of public
Servants.

Clause 190. I have for a long Time considered the existing Regulations in respect to Perjury as not adapted to the State of Morals and Society in India. They are a mere Reflection of the English Law on the Subject, by which the Crime is viewed in a peculiar Light, as the highest Contempt against a Court of Justice, and dealt with accordingly. The Law in England, moreover, which visits the Offence with peculiar Severity, is in entire Unison with the Feelings and the moral Condition of the People.

Chapter X.
Of Offences
against public
Justice.

The Modification of the previous Law proposed in the Code, by which Perjury is dealt with on its own Merits, and which annexes even Transportation for Life to certain Grades of the Offence, is a great and valuable Improvement in Principle; but it does not appear to me that the Principle is carried by any means far enough in the descending Scale.

The Crime appears still to be viewed with English Eyes, and visited accordingly with heavy Penalties, though in the Notes (Page 41) it is acknowledged that direct Perjury does little Harm in India compared with what may be effected by it in England. It is not apparently sufficiently borne in Mind that we have no Oath by which we can bind the Conscience of the Hindoo. He does no Violation, therefore, to his Conscience in forswearing himself, and he neither does nor can he perceive and feel with us the Enormity of Perjury. By this Clause (190)† the heavy Penalty of the old Law is in a great Measure retained (with the very valuable Addition of Fine), whether the Perjury has been committed in the *most trivial* or in a very important Case, and the natural and necessary Consequence is, that the Convictions will always be extremely limited, and the Prosecutions, as heretofore, few. Perjury, therefore, it may be predicted, will continue unabated, under a Code which annexes these high Penalties.

The Interest of the Community would, I conceive, be better served by lowering the Penalty of the Offence, and enjoining frequent Prosecution. A beneficial Result has, I believe, always followed whenever this Experiment has been tried. Captain Pottinger states that he had by this Means so completely repressed the Offence “that he did not recollect a single Instance of Perjury having occurred before him in Six Months.” Judicial Selections, Vol. IV. Page 451.

Clause 193. provides only a Penalty where the fraudulent Claim is set up to prevent Property being taken in Execution of a *Decree* of a Court of Justice. I see no Reason for confining the Rule to Decrees. The Clause should provide alike for Cases where Property is taken in Execution of a Decree or *in pursuance of any Order of a Court of Justice*. In Cases where Orders are issued on Motions, not on Decrees, for taking Property into the Possession of the Court, Parties who may prevent the due Execution

* Whoever, being a Judge, for any Purpose of Favour or Disfavour to any Party, disobeys any Direction of the Law of Procedure, shall be punished with simple Imprisonment for a Term which may extend to One Year, or Fine, or both.

† Whoever gives or fabricates false Evidence shall, except in the Case herein-after excepted, be punished with Imprisonment of either Description, for a Term which may extend to Seven Years and must not be less than One Year, and shall also be liable to Fine.

of such Orders, by wrongful Claims or deceptive Practices, impede the due Administration of Justice as much as those who so act after a Decree has been passed. It is advisable, I think, that Provision should be made for the one Class of Cases as for the other.

Clause 196.* This Clause is of the first Importance to the due Administration of Civil Justice in the present State of Society in South India; but to be effective it must be enlarged. It was an Evil of frequent Occurrence in Tanjore for Parties to introduce into *just Suits* as regards the chief Litigant the Names of Parties as Defendants and even as Co-Plaintiffs who had no Concern in the Suit, placing all their Property for the Time being in Litigation, greatly to their Detriment and Annoyance. This Case does not appear to be provided for by the Rule; neither does this Clause provide for those Cases in which the Suit is wholly fictitious—not instituted for the Purpose of Annoyance.

In Tanjore, for instance, it is not infrequent for an Individual possessing Landed Property, on entering into Partnership in Trade, to set up some Defendant, or a near Relative, to institute a Suit for the whole of his Property. The Claim of the Plaintiff is admitted by the Proprietor, the Defendant in these fictitious Suits. No one at the Time is injured or annoyed. It is only in the Course of Years, when unsuccessful in his Speculations, and at the Time his Creditors press their Claims against him, that the original Plaintiff, the Man of Straw, appears,—not with a naked Claim, but with a Decree in his Favour, adjudging him the whole of the Defendant's Property. This Property, he will acknowledge, he has nevertheless left the whole Time in the Defendant's Possession; but he pleads his Right under a Decree of Court. To put down this, and similar abusive Use of the Courts of Justice, I would strongly recommend that the Clause should be so framed as to include all Classes of fictitious and fraudulent Litigation. It might run thus:—"Whoever fraudulently institutes or becomes a Party to any fictitious Suit what-ever shall be," &c., as in Clause 196. Or thus:—"Whoever, for the Purposes of Annoy-
ance or Fraud, institutes or wilfully becomes a Party to any Suit, knowing that there is no just Ground for such Suit, shall be punished with Imprisonment," &c., as in the Clause.

To the Explanation I would add a Note, that, "although a Suit may be just as respects some of the Parties, yet if it is clearly fraudulent in regard to others it may be dealt with as fraudulent."

I shall only repeat here, that Clauses 284, 285 are not, I think, Matter for a Criminal Code. It would be far better to leave Parties to seek Redress for any Damage they may sustain by a Civil Action. What End, I would ask, is answered, so far as the Public is concerned, by upholding the injurious and unnatural Brahminical Privilege of Caste? Suppose a Brahmin does lose Caste;—he may have his Remedy by a Civil Action to recover the Amount necessary to procure his Reinstatement, and Indemnification for his temporary Loss. Who also is to define what will cause the Loss of Caste? Swallowing Beef Broth may be supposed to do it in Bengal; but is such the Fact. And is not this an Infringement only of Caste Rules, to be atoned for by temporary Penance and ceremonial Observances (Mautrams)? In Practice is Loss of Caste incurred by any Act short of Conversion to another Faith, or cohabiting with a Pariah?

These are Questions preliminary to any Decision; and how is a Criminal Court to receive Evidence and determine these Points before it passes Sentence? It is idle to appeal to the written Sastras. They have long fallen into Desuetude. Various Tribes of Brahmins, the Camarese, for instance, perform Sacrifices, and engage in other Practices, an Abomination to others, and Usages contrary to Caste in one Place are freely practised in another. In Southern India no Fish is eaten, as prescribed. It is a common Diet of the Brahmin on the Ganges. Is the Pariah of different Grades or the mixed Classes protected by this Caste Law? And yet they have their Distinctions and peculiar Privileges, as dear to them as their Privileges are to People of Caste.

The practical Necessity of these Clauses should, I think, be very clearly established before they are allowed to form Part of the Criminal Law of the Country.

Clauses 301 and 303. It would be well, I conceive, if some Rule were laid down which should distinguish Cases where Persons guilty of voluntary culpable Homicide may be comparatively but little to blame from Cases which come within a Shade of Murder.

The Provisions, as they now stand, in the Case of Manslaughter and Homicide in defence, are, I think, open to the Objection that the same Measure of Penalty may be inflicted on the least as on the most aggravated Case; and all is left to the Discretion of the Judge. Is this Latitude necessary or expedient?

Clause 306.† The Inducement to commit the Offence here pointed out must be in the ordinary Course of Events so exceedingly slight that it scarcely seems necessary to place the Offence on a Level with the most atrocious Murder, and annex the Penalty of Death,

* Whoever fraudulently, or for the Purpose of Annoyance, *institutes* any Civil Suit, knowing that he has no just Ground to *institute* such Suit, shall be punished with Imprisonment of either Description for a Term which may extend to One Year, or Fine, or both.

† If any Child under Twelve Years of Age, any insane Person, any delirious Person, any Idiot, or any Person in a State of Intoxication, commits Suicide, whoever previously abets by Aid the Commission of such Suicide shall be punished with Death, or Transportation for Life, or rigorous Imprisonment for Life, and shall also be liable to Fine.

It would, in Practice, probably be found, that a less Penalty than Death would be sufficient to check the Commission of the Crime.

Clause 307.* A similar Remark applies to this Clause. I greatly doubt the Necessity of such heavy Penalties to repress the Offence. Five Years Imprisonment, where Fine is imposed, I should consider ample, and better adapted to the Character of the Offence in the existing State of Society. If the Rule, "to do an Act (Clause 24) denotes Omission," is to be applied largely to this Clause, it will require great Modification, in my Opinion, for the Instances of Suicide which might be prevented by Persons are numerous, and at present they have not the most remote Idea that they are acting criminally or abetting a penal Act by such Omission. They ought not, therefore, to be liable to the heavy Penalties here provided.

Clause 312. This Clause appears to me to confound Offences distinct in themselves, and which should not be visited by a like Measure of Punishment.

On the causing of Miscarriage.

The high Caste young Widow who to hide her Shame should at the Risk of Life cause herself to miscarry does not, under the peculiar Circumstances in which she is placed by the Institutions of Society, commit an Offence in any respect of like Criminality with the Seducer of a young Girl or married Woman, who to cover his Crime should cause such Woman to miscarry. The Offences are so distinct that I think separate and special Provision should be made for them. In the one Instance a Penalty of not less than Two Years would only meet the Case; in the other, a trifling Punishment, in addition to the Degradation of a Criminal Trial, would be ample. I much doubt the Policy of providing heavy Penalties for the Repression of the Offences of causing Miscarriage by the Woman herself, whilst the barbarous Institutions of the Country create the Offence. Let a Remedy be applied to the Root of the Evil,—the Re-marriage of Widows be sanctioned by Law,—and the heavy Penalty may then be enforced with Advantage to Society, otherwise it will avail nothing. My Experience would also lead me to propose that Miscarriage should be defined. I have known groundless and false Charges of this Nature brought, and the Parties exposed to the Pain of a Criminal Investigation, when there was no Evidence whatever as to the Existence of the Fœtus, and it was not established, therefore, that the Woman was with Child, or that there had been an Abortion. "Every Woman being with Child" may open the Door to vexatious Accusations. I would throw on the Accuser the Onus of establishing in Imine that the Fœtus was distinctly formed, and manifest on its Abortion, before the Charge of causing Miscarriage should be entertained. If this was not alleged in the Charge, it should not be held that "the Woman was with Child." An Explanation might be added that to be with Child, in the Eye of the Law, the Charge must allege the Abortion of a Fœtus fully formed.

315. First.—To Emasculation I would add, or Injury to the Membra privata. In this Country the Enormities which appear in Cases where Dancing Girls have been Parties, and in Robberies where the Object has been, not to injure, so much as to force through Fear Confession of concealed Property, appear to me to require this Addition. For whether the Wounds or the Injury actually received are trifling, and do not amount to Hurt, as defined under "Eightily," this Act ought still, I think, to be repressed by severe Penalties, as peculiarly offensive to the Feelings of the Party injured, as well as most dangerous, the slightest Excess causing the severest Suffering.

Of Hurt.

Seventhly. Dislocation of any Bone other than a Tooth. This would not provide for a Class of Cases which came before me in the Northern Division, where the Sufferers had the *whole* of their Teeth forcibly removed; and I am not clear that the Offence could be brought under any of the prior Provisions.

To meet the Case I would suggest an Explanation, to the Effect that the Removal of the whole or the greater Part of the Teeth, permanently weakening the Powers of the Jaw, does not come within the Provision for "Fracture or Dislocation of a Bone other than a Tooth," but under the preceding Head Sixthly.

Clause 341† It deserves, I conceive, much Consideration whether this Enactment is adapted to the existing State of Society, unless some special Damage or Injury has been sustained in consequence of this Show of Assault. It would be better to leave such Acts unpunished than to open so wide a Door as this Clause must to frivolous and vexatious Accusations.

Show of Assault.

Every Bazaar Fracas, where the Parties are loud and angry, is accompanied with abundant Gestures and Show of Assault; but it appears to me, nevertheless, on Principles of general Policy, inexpedient to encourage a Resort to the Criminal Courts in these and similar Cases, unless some special Hurt or Injury has ensued. If a Party is of that Rank and Estimation in Society that any Preparation or Show of Assault degrades him, he may have his Remedy by Civil Action. This I am inclined to believe a better Course than to make the Act of Show of Assault, as it now is, in all Cases, a Crime.

* If any Person commits Suicide, whoever previously abets by Aid the Commission of such Suicide shall be punished with Imprisonment of either Description for a Term which may extend to Fourteen Years and must not be less than Two Years, and shall also be liable to Fine.

† Whoever makes any Gesture or any Preparation, intending or knowing it to be likely that such Gesture or Preparation will cause any Person present to apprehend that he who makes that Gesture or Preparation is about to assault that Person, is said "to make Show of Assault."

Clause 351.* It is I think desirable also that there should be a similar Limitation annexed to this Clause, that some Damage or Hurt has ensued from the Assault. I do not consider an Individual who may use some highly insulting Epithet to another, and is taken by the Arm and slightly shaken or pushed on One Side for his Impertinences, entitled to drag the Party he has insulted before a Criminal Court, and there convict him of an Offence. To authorize the Criminal Accusation, he ought to be required to show some bodily Hurt or Injury, and if he has received none no Offence against him has been committed, for the Party can scarcely be held to have taken the Law into his own Hands to an Extent which ought for the Well-being of Society to be repressed.

Of Rape.

Clause 359.† Fourthly. I would not restrict this to the Case of married Women alone. Slave Girls, and other Women, who, from the Institutions of the Country, may not be married, but who cohabit with One Man, and whose Children are recognized as his by the Father, are equally entitled to Protection. I would add to this Head the Words, "or with whom alone she cohabits."

Exception to Clause 359.‡ I doubt the Propriety of this Exception. The early Ages at which Children are married, and are in the Eye of the Law Wives, makes it necessary that Protection should be given to them by the Law till they are of Age to reside with their Husbands. The Case is not imaginary. I remember a Case of forcible Violation, and great Injury to a Child, in the Masulipatam District, where the Offender was the Husband. To the Exception I would add the Words, "if she is of Age to reside with him."

Clause 360. I can see no sufficient Ground for the Distinction drawn between Rape and unnatural Offences, as in Clause 362, nor why the Person and Chastity of the Female should be protected only by a Penalty which cannot exceed Fourteen Years Imprisonment, and may be but Two, whilst the Abuse of the Person of the Man may involve Imprisonment for Life, and cannot be less than Seven Years. The Woman is assuredly entitled to equal Protection with the Man; and it would not be rare, I imagine, to find Women of Caste, by whom Death would be considered a less Evil than the Violation of their Persons by some Low-caste Fellow. In a Society so constituted, the Offence of Rape should, I am of opinion, be visitable with the higher Penalty of Imprisonment for Life; and I can perceive no good Reason for so low a Penalty as Two Years. If Rape at all, it must merit a higher Penalty. This large Range of Two to Fourteen Years in the Case of an Offence not capable scarcely of Degrees, for either there was or there was not a forcible Violation, goes rather to meet Cases of Doubt as to the Fact than Degrees in the Offence. If the Fact of a forcible Violation was fully established, I can perceive no Ground, even if the Woman was without Character for lessening the Security of Person. If it was not established, then there was no Rape, and let it be dealt with accordingly, as Assault, if thought proper; or Acquittal is preferable, if there is the slightest Doubt of the Fact. I would strongly advise, therefore, that the Penalty be as high in the Case of Rape as of unnatural Offences.

Chapter XIX.
Of Offences
against Property.

Clause 365.§ The Provisions of this Clause do not appear to me to be framed with sufficient Regard to the Habits of Society. "Any Building or Tent used as a Human Dwelling," includes Thousands of Mud or Bamboo Huts, with nothing but a Grass or Mat Door, wholly insecure and unprotected. I think a Distinction should be drawn between such Dwellings and others of greater Solidity, and duly secured.

Theft in the One by Two or more Persons ought not to be subjected to long and severe Imprisonment, unless the Thieves are old Offenders. I have known several Criminal Cases where Two Persons have committed Theft of some trifling Article in One of these insecure Huts, where I should consider rigorous Imprisonment uncalled for, especially in the Case of Females, and even a Month's Imprisonment ample for a First Offence, in consequence of the Manner in which the Property has been left unguarded, tempting to the Commission of the Crime.

I should limit the Clause of Buildings used as Human Dwellings, and for the Custody of Property, *well* and *properly* secured, and add an Illustration pointing out that an open Shed or Hut with a Grass or Bamboo Mat for a Door is not a Building properly secured.

* Whoever assaults any Person, on grave, &c. sudden Provocation given by that Person, shall be punished with Imprisonment of either Description for a Term which may extend to One Month, a Fine which may extend to 200 Rupees, or both.

† With her Consent, when the Man knows that her Consent is given because she believes that he is a different Man to whom she is or believes herself to be married.

‡ Sexual Intercourse by a Man with his own Wife is in no Case Rape.

§ Whoever commits Theft within any Building, Tent, or Vessel, which Building, Tent, or Vessel is a Human Dwelling, or within any Building used for the Custody of Property, in pursuance of a Conspiracy in which any Person residing or employed within that Building, Tent, or Vessel, and also any Person not residing nor employed within that Building, Tent, or Vessel, are engaged, shall be punished with rigorous Imprisonment for a Term which may extend to Three Years, and must not be less than Six Months, and shall also be liable to Fine.

Clause

Clause 371. The Penalty appears to me disproportionate to the Offence. It is precisely the same as provided for Rape actually committed. To induce Offenders to abstain from the Perpetration of serious Injuries when they extort Money, would it not be advisable to lighten the Penalty where the Offender has stopped short of actual Injury, and contented himself with only putting his Victim in fear?

Clause 379. It is, I conceive an Omission in the Enactments on this Head, that a Distinction is not drawn between the Leaders, those also who are regular Members of an organized Gang, and take the active Part in Dacoities, and the low Tools, who are hired for a Quarter of a Rupee, or a few Annas, for the Night, to swell the Members of the Gang. I was credibly informed that in several Instances of Gang Robbery or Dacoity brought before the Criminal Tribunals in Tanjore the Majority of the Prisoners were low cultivating Serfs got together at a Day's Notice, unarmed, who would receive no Share of the Plunder, or but some refuse Article, and a few Annas. Dacoity.

The efficient Penalty in their Case my Experience would lead me to say would be Six Months rigorous Imprisonment, and a sound Flogging. To incarcerate such Men for Seven or Fourteen Years is only training them for future Crime, and burdening the Government, without tending in the least to diminish Dacoities, for there are and will be for Years Hundreds of poor ignorant Hinds who can always be made Tools of for a few Annas.

In lieu of the Provisions in the Code, I would propose, and I would not leave it discretionary with the Courts, Transportation, or Imprisonment for Life, or Fourteen Years, in the Case of every Leader, every regular Member of the Gang, every Person armed with a Weapon capable of inflicting Death, and all who use personal Violence in a Dacoity; but for the great Body of the Gang, who in some of our Provinces are often mere Coolies, Six or Twelve Months rigorous Imprisonment, and Security from the Head of their Village on Release. The Dacoities of Southern India are not ordinarily like those in Northern India. For instance, the Robbery of Guards with Treasure, or of Treasuries, and similar daring Outrages, are not known. If an accurate Comparison is made between the Dacoities which come before the Nizamut Adawlut in Calcutta, and the Fouzdarry Adawlut in Madras, the Distinction between the Offence in the Two Presidencies will be clearly seen. The only Exception I am aware of is in the Case of the Hill Gangs in the Northern Circars; for it is rarely in other Districts, and only in the special Case of Leaders (as Appoo and Cauten), that Dacoities assume in this Presidency the same Character as in Bengal, and become the Scourge of the Country.

I would also not only recommend a Distinction as to the Persons who commit Dacoity, but proportion the Penalties to the Nature of the Dacoity itself. A Dacoity in Tanjore was often effected by a Body of Men of whom even the Leaders had only Sticks in their Hands,—the others nothing.

I would draw a Distinction between Gang Robberies by such Means, when the Offenders are not prepared to offer Resistance to any armed Person nor to the Police, and the atrocious Cases in which a Gang come well armed, prepared for Murder and every Violence, and both purpose and do resist any Force brought at the Moment against them.

Again, I would exclude from Dacoity all Robberies of Grain by Gangs exceeding Six in Periods of great Scarcity or Famine, and treat such Cases as Theft, unless committed by an organized Gang, and not by a Body congregated on the Spur of the Occasion in the Hope of obtaining Food.

I would not further treat such Cases as Dacoity, although other Property than Grain was taken, if it was clear that the *main* Object of the great Body of Plunderers or of the Gang was Grain, though they might be led on to take other Things.

I consider the Provisions in the Code defective as embracing all Grades of Gang Robbery or Dacoity under One Rule, and subjecting them to the like Measure of Penalty.

Clauses 389, 390. These Provisions I consider to be wholly inadequate to the Offence when it has been committed by an habitual or professional Receiver, by an Officer of Police, by a Servant of the Party robbed, by Persons who keep Houses of Ill-fame, or for the Sale of spirituous Liquors, when the Amount is large, or by a Party who is known to organize and originate Plans for Robbery, and habitually lives on Plunder. In such Cases the Interests of Society require heavier Penalties than those provided, and they should be made imperative. Of the receiving stolen Property.

The Aggravation specified in Clause 395, in the Case of cheating a Party "whose Interests he (the Cheat) was bound by Law or by legal Contract to protect," exists equally, it appears to me, in Cases of receiving stolen Property by Watchmen and Guards, and should be introduced into these Clauses of the Code.

Clause 406. This Clause appears to exclude from Punishment the Offence of poisoning a Calf, or Two or more Goats or Animals, under the Value of Ten Rupees. Clause 402

* Whoever commits Extortion by putting any Person in fear, for that Person or for any other, of Death or of grievous Hurt, shall be punished with Imprisonment of either Description for a Term which may extend to Fourteen Years and must not be less than Two Years, and shall also be liable to Fine.

does not, even if applicable, provide the Penalty where the Loss has been that of Two Goats or a Calf, Property often of great Moment to the poor Man, but of which the Value will not probably amount to Three Rupees. The Specification of "Cattle" in Clause 406, and the Absence of all Reference to *Animals* in the Illustrations to Clause 399, have given rise to the Doubt in my Mind whether poisoning Cattle is included in Clauses 400, 401, and if not, the Question arises, Is the Offence of poisoning Cattle under Five Rupees Value provided for at all? Clauses 412 and 414 lie open, in my Opinion, to the strong Objection already made, of a Want of Adaptation to the Circumstances of Society. The Grass or Mat Huts of the lowest Classes are placed on a Level with the substantial, secure, and valuable Dwellings of the better Classes. The Penalty, considering the Injury in the Case of these frail Dwellings, is altogether disproportionate; and if, as in Clause 415, a Limitation is made to *decked* Vessels, so I conceive a Limitation similar in its Characters should be made in the Cases of Houses.

Clause 440. It might perhaps avoid Difficulties if the Terms express or implied were inserted after the Word "Contract" in this Clause. The whole of these Provisions relative to Housebreaking appear to me defective, in not enjoining heavier Penalties when committed by or in conjunction with Servants, Watchmen, or Police Officers bound to protect the Property against whose Depredations it cannot be so easily secured. The Legislature should especially provide that such Offenders shall be visited with the extreme Penalty authorized, and not leave it to the Will of the executive Officers.

Chapter XX.
Of Offences
relating to Docu-
ments.

Clause 444, 449. These Clauses, &c. would render any Party who had in his Possession a forged Receipt to the Value of Five Rupees or other trifling Sum liable to Two Years Imprisonment at the least. I think in such Cases, of frequent Occurrence, a Penalty to this Extent altogether uncalled for by the Wants of Society. If such Documents were even uttered as genuine, a Fine of Ten Times the Amount, commutable to Imprisonment for a few Months, would probably be sufficient to check the Offence in these trifling Cases, and afford ample Security to Property, especially if that Fine, or a Part of it, were made over to the Party intended to be defrauded.

Chapter XXV.
Of Defamation.

Of Defamation. I shall venture a few Remarks on the confessedly very difficult Question involved in the First Exception, Clause 470, that Truth is under no Circumstances Defamation, and consequently not penal.

It appears to me that numberless Instances must arise daily in Society where, unless some public Benefit is to accrue, Individuals should be protected against the Publication of Truths most painful and annoying to them, and where, if not protected by the Law, they will take the Remedy into their own Hands. The Line I should greatly prefer to the Rule in the Code is drawn in the Recommendation given in the Note, Page 99; and I cannot think the Provisions in the Code founded upon enlarged and just Views of Human Nature. There is probably nothing more irritating and more harassing to a Mind which has most thoroughly repented of some gross Indiscretion, or it may even be of the Crime, of early Days, than to have it continually forced back on the Memory or on public Attention in all its Details; and if the Individual has repented and reformed, and has been since so living that Society both does and ought to respect him, and can come into Court with clean Hands, or a Character, I can see no Reason why he should not be protected against the public Exposure of former Frailty, or Crime, made with no other View than to minister to a depraved Appetite for Scandal, or to indulge some Malice or personal Pique.

It is, I believe, necessary, as the Human Mind is constituted, for the Good of Society, that the Follies and Offences of Individuals should be forgotten as well as forgiven, and that their Peace should not therefore be destroyed but for some public Benefit. I therefore deprecate the Licence given in the Code to malicious or wanton Attacks on the personal Characters of Individuals, however true, who may, through the natural Infirmary of Human Nature, have done that which has justly laid them open at One Time of their Life to public Opprobrium. I might ask, what Advantage can result to Society from the unlimited Licence given in the Code to every Hireling to publish a true and correct Account of the Life of any Woman who had lived as a Mistress before her Marriage. Not only her own Peace but the Peace of her Family would be destroyed by the Publication of such Matter; and if the Law did not, as the Code proposes, provide a Remedy, her Relatives would be led to redress themselves, and the practical Result of the Law as it now stands would, I should suppose, be in this and in numberless Cases an Increase of aggravated Assaults and similar Offences.

I am aware that the Instance given may be admitted; and it may be alleged that the partial Evil pointed out is overbalanced by the general Advantage to Society which would result from the Law; but I doubt much whether this is a satisfactory Reply, considering the large Number of Instances which must always exist where Persons have repented, and need Oblivion of the past for their Peace.

But there is still another Class of Cases, where great Injury may be done, left, it appears to me, wholly unprovided for; for Clause 285 is, I apprehend, restricted to Words spoken or uttered, and does not relate to printed Matter. I see, therefore, no Provision in the Code and nothing in the Notes to meet the Arguments affecting the Class of Cases to which I refer, where Truth, it has been said, is an Aggravation rather than a Mitigation of the Offence. As the Work is before me, I quote, on this Point, in preference

preference to any Attempt to put the Subject in other Language. «Starkie on Libel, Preliminary Discourses, Page LXVII. Note.

It is there observed, "That a celebrated Orator and Statesman, Mr. Fox, in his Speech on that Occasion, admitted that 'there certainly were Cases in which Truth would not be a Justification but an Aggravation. Suppose, for instance, a Man had any personal Defect or Misfortune, anything disagreeable about his Body, or *was unfortunate* in any of his Relations, and that any Person went about exposing him on those Accounts for the Purpose of Malice, and that all those Evils were Day after Day brought forward, to make a Man's Life unhappy to himself, and tending to hold him out as the Object of undeserved Contempt and Ridicule to the World, which is too apt to consider Individuals as contemptible for their Misfortunes rather than odious for their Crimes and Vices. Would any Man tell him, that in Cases of that Sort the Truth was not rather an Aggravation?' The Justice of these Observations is undeniable. The Truth of Facts which impute no Blame to a Party, who may nevertheless be annoyed and irritated by a wanton Publication of those Facts, can afford no Justification to the Aggressor in a moral point of view. Truth as well as Falsehood may be used as the Instrument of Malice; and, consequently, where the Object is to restrain such contumelious Reflections and Abuse by Penal Censures, it would be absurd to make their Truth a Defence upon a Criminal Charge."

I consider, therefore, the Exception of the Law Commission, that "it is not Defamation to attempt to cause anything which is true to be believed in any Quarter," a Rule of very doubtful Expediency, and I should prefer seeing it tried on a limited Scale before it is made the Law of all India. I will briefly notice, finally, the Omission of Two valuable Provisions of the Madras Regulations, viz., Regulation I. of 1832, and Section VII. Regulation XIII. of 1832, for which I see no corresponding Rules in the Code. If, as I apprehend, Clauses 158, 160 do not include the Offences provided for by the Madras Enactments, I consider those Provisions, the first punishing false Allegations in Petitions of the Judicial Courts (Regulation I. of 1832), the other, Prevarication or other gross Contempt of Court, Section VII. Regulation XIII. of 1832, of great *practical* Importance. They confer upon the Courts a Power essentially necessary in the present State of Society to check the Attempts hourly made to impede the due Administration of Justice; and, whatever may be the Objections to them on general Principles, they are, I am satisfied from Experience, necessary and peculiarly well adapted to the Exigencies and Circumstances of South India. I should regret, therefore, their Omission from the Penal Code of this Presidency.

In closing these Remarks, I shall repeat the general Opinion I have already expressed, that the Code appears to me well calculated to form the *Basis* of an highly improved Penal Code for India; that it is not in its present Form sufficiently level with the Mind of the Native Officers who are to administer its Provisions, and that for their Use it must be simplified; that there is occasionally Over-legislation and Refinements which need to be retrenched, and Novelties in Penal Legislation which should not be tried on the large Scale on which the Code must operate; that with these Modifications I should rejoice in its early Promulgation as the Law of this Presidency.

(Signed) J. F. THOMAS.

Enclosure 9 in No. 78.

ABSTRACT of the GENERAL OPINIONS and OBSERVATIONS on the CODE, by the Judicial and Magisterial Officers in the Interior of the Madras Provinces.

THE Reception which the Penal Code has met with from the Officers in the Judicial and Magisterial Departments who have submitted their Opinions upon it has been very various. While some Gentlemen have bestowed upon it the most unqualified Admiration, others have viewed it in the very opposite Light; and Enactments which have called forth Expressions of great Applause from some have been very severely censured by others.

Mr. Dickinson, First Judge of Circuit in the Southern Division, thinks that in the Code there is much that is excellent, but more that is altogether inapplicable to the Natives. He looks upon it as a good Groundwork whereby our present Code might be improved, but he deprecates the Substitution, by One stroke of the Pen, of the new Code, for one that is admirably well suited to the Necessities of the Country. He does not think, if adopted in its present Form, that the Courts could continue, except by taking upon themselves to act in Cases that ought not to be left to their Discretion; and he particularly thinks that the Extent of Punishment awardable under it is far too unlimited.

Mr. Haig, Second Judge of the Provincial Court in the Northern Division, thinks the present Code of Regulations superior to that proposed by the Commissioners; and if a fixed Rule of Conduct be the Object of all Law, it is, in his Opinion, unwise to repeal what, on Experience, has been generally approved of by the People in these Countries, and to substitute a Code, founded on no tried System, which aspires to combine in Theory

the Perfection of all Laws. He considers that the grand Principle, of not assigning Penalties of the First Degree to Offences of an inferior Rank, does not appear to have been attended to in the Construction of the new Code.

Mr. James Thomas, the Criminal Judge of Rajahmundry, thinks the Code calculated to mislead where it is intended to be most clear; that it is rather a Disquisition on Ethics than a practical Code, and prepared apparently for Persons little acquainted with the English Language, who require to be guided by the most trifling Illustrations, and who have been brought up in a Country where Justice has been administered on no fixed Principle. He cannot otherwise account for the Introduction of many self-evident Explanations and Illustrations, some of which he quotes. Mr. Thomas expresses his Disapprobation of the Principles, the Enactments, and the Arrangement of the Code in very strong Terms, and concludes by stating that from its manifold Defects of all kinds (arising from no existing Code having been taken as a Model) that he cannot bring himself to believe that the new Code will ever supersede anything so generally good and well adapted to India as the Regulations of the Madras Government.

Mr. Kindersley, the Magistrate of Tanjore, while he admires the Labour and Talent bestowed upon the Code, doubts much its Applicability to the present State of Civilization in India. He thinks, too, that the Poverty of the Native Language will form a formidable Bar to its Translation, in consequence of the fine-drawn Distinctions and Definitions, which can be fully understood only by an educated Englishman, and ends by stating that much depends upon the future Code of Procedure.

Mr. Malcolm Lewin, Acting Second Judge in the Provincial Court in the Centre Division, considers that the Commissioners have compiled from and corrected the most enlightened modern Codes,—have consulted the Manners and the Customs of the People for whom they are legislating,—have considered the Relation between the Crime and its Punishment, both as regarding Society and the Criminal,—and have had a Consideration to Humanity which accords with the Feelings of the People and to which they have been accustomed under the Mahomedan Law and Madras Regulations. Mr. Lewin supposes that the Reason for having a new Code at all is, that what we at present use has been found inadequate to check Crime; but he thinks that it would be better to assist in carrying the present Law into effect than to make a new Code, and preferable to employ the Time and Talent expended on the latter in improving the former. As a Theory, it is good; but we have already suffered too much by Theory. In India, from the State of the Country, cheap and prompt Justice is the only Justice, and *Forms* tend rather to arrest its Progress in a Country where Poverty, Ignorance, and the corrupt State of the public Servants, acting upon a People of little moral Principle, have produced the Quantity of Crime at present existing. Mr. Lewin combats the Objection against the Universality of the Code, as not only are the Principles of Justice the same everywhere, but there are as many Incongruities from Caste, Religion, and Custom in One Village as would make the Objection invalid; but it may be said the Code goes too far in legislating for the Views of the Country, by supporting Caste, and admitting of trivial Presents.

Mr. Harington, Acting Second Judge in the Southern Provincial Court, considers the Code generally well adapted to the Wants of Society, in the Suppression of Crime and the Security of Property, but thinks that it goes too much upon fine drawn Distinctions and Subdivisions of Crime, and is calculated rather to bewilder than to guide.

Mr. Boileau, Third Judge in the Western Division, thinks that, with all due Credit to the Way in which the Code has been arranged, it would have been better to have retained the present Regulations, and modified them. He seems to doubt the Possibility of giving correct Versions of it in the Native Languages in its present State, and thinks that the Commissioners have been unmindful of the Maxim, “*De minimis non curat Lex.*” He particularly instances its elaborate Notes and Comments. Mr. Boileau thinks it a false Principle of Punishment not to have everything fixed, “so that the Law may” be observed in its *literal* and *constructive* Sense, and no Discretion left to the Judge.

Mr. Lascelles, the Criminal Judge of Chittoor, thinks the Code admirably adapted to the Purpose for which it is intended.

Mr. Stromboni, the Criminal Judge of Cuddapah, thinks it is adapted to the Purpose for which it was framed, and contains nothing exceptionable, with the Exception of Clause 468.

Mr. John Fryer Thomas, Commissioner for investigating into the Carnatic Claims, considers the Code chiefly valuable as a Compendium of the latest and most enlightened Views of Criminal Jurisprudence, applied with Judgment to India, and particularly admires the extensive Use of Fine applied to indemnifying Parties who are injured, the Chapter on Abetment, and the Introduction of the discriminating Principle of the French Code respecting Perjury, as well as the Comprehensiveness in the Definition of Offences which at present are unlegislated for but by the unsatisfactory Award of discretionary Punishment. He thinks the Abrogation of the Mahomedan Law very important, and that the Code in its present Form, with little Modification, is fit to be immediately adopted. He doubts its Advantage in the King's Courts with respect to Europeans, but thinks it will suit the Natives in it much better. The chief Evil of the Code is, that it is too refined,—that the Natives will not be able to understand it.—and that a close Translation will be impracticable. He thinks the Evil consequent upon this would be checked by having a Manual for the Use of the Native Servants, with Illustrations and Explanations,

such

such as was suggested by the Third Judge of this Court, Mr. A. W. Campbell. He considers the large Discretion in the Measure of Punishment another serious Objection. Unlimited Fine would operate severely on those who would never submit to the Degradation of Imprisonment. He thinks the Penalties have not in all Cases been duly apportioned to the Crime, and that too much has been left to the Executive Officers. He hopes that the Code of Procedure will remedy this, by classifying the different Grades of Offence and Penalty, and make the higher Penalties *obligatory*. Without some such Rule as this, the Code will fail in the great Quality of Uniformity. The Work, he concludes, is calculated to form the Basis of an highly improved Penal Code for India, but in its present Form is not sufficiently level with the Minds of those who will have to administer it. He also hopes that some of the Refinements will be modified.

Mr. Edward Bannerman, the Criminal Judge of Salem, thinks that the peculiar Excellence of the Code (of which he expresses his general Approbation and Admiration) is, that it is so framed as to suit itself to every State of Society which, "Self-adjustibility" it chiefly attains by the System of Commutation on which the Punishments are placed. He next approves of the awarding Part of the Penal Fine to those injured, as being equitable in itself, preventing Prosecutions for Conspiracy, and stimulating the apathetic Natives to bring Offenders to Justice. He considers that the Code "will best be appreciated when the hitherto denied Boon of *Education* to the Masses, and reformed *Municipal Institutions*, have raised the now abject and prostrate Populace to the Conditions of thinking "Beings and Citizens."

Mr. Horsley, the Criminal Judge of Chingleput, thinks there is no Necessity whatever for the Code, and that with the Exception of that which refers to the Mahomedan Law the present Regulations are amply sufficient. He also thinks that the Explanations and Illustrations will tend to confuse rather than to assist.

Mr. F. Lewin, Criminal Judge of Combaconum, thinks that the Code will prove a great Blessing to these Provinces, and that there will be no Difficulty in carrying it into execution, provided it be accompanied with a good Code of Procedure.

Mr. George Bird, the Criminal Judge of Canara, says that the Code seems calculated to supply a good deal that is wanting, but that the new Distinctions and vast discretionary Power will diminish its good Effect. Much will depend on those who first put it into Practice, for unless much Care be used, it is likely to become an Engine of Oppression.

Mr. Blane, the Magistrate of Cuddapah, thinks the Code well adapted to its Purpose, the Arrangement simple, and the Punishment so discretionary that where Leniency is required the Judge can mitigate. Much, however, will depend upon the Code of Procedure, as the Degree of Punishment is but unimportant in comparison with the Certainty of prompt Retribution.

Mr. Strange, the Joint Criminal Judge of Malabar, thinks the Code has supplied a Want very fertile of Evil. As Matters at present stand, Crimes are very much undefined, and most opposite Views may be taken. All this will be corrected by the present Code, with the help of a copious Index; and though it may be said to be too coercive, we should recollect that no known Offence can be excepted "without doing Violence to Morality, and offering Encouragement to Offence." The present System of requiring no training for the higher Offices in the Judicial Line would not be a fair Trial for the Code, for there is great Necessity for having good Officers at first, and if this be attended to the Advantages will be very great.

Mr. Anstruther, Acting Joint Criminal Judge of Coimbatore, thinks the Spirit of Criticism on the other Codes bad, and that the quibbling Decisions are likely to teach People Evasion. The Plainness of the Illustrations would make one suppose that the Provisions were a fruitful source of Error, or that the Understandings of the Administrators were very confused. He does not think the Madras Code so deficient as to be given up, and considers that it would be well to retain the present Regulations.

Mr. Baynes, the Joint Criminal Judge at Cuddalore, observes that several attentive Perusals have extorted from him the greatest and most unqualified Admiration, and that nothing would be a greater Benefit than the speedy Enactment of the Code, which cannot fail to be considered as one of the most valuable Presents ever made by Civilization and Philosophy to Barbarism and Ignorance.

Mr. Edward Maltby, the Joint Magistrate of Canara, thinks that the Code is perfectly untranslatable, and the subtle Distinctions, such as the Limitations to the Right of Self-defence, and the Definition of Thefts and Assaults, could never be intelligible to the Native Officers who will have to administer it. He objects also to the constant Legislation respecting *Thoughts* and *Intentions*, and thinks that as it at present stands the Code will afford Opportunity for vexatious Prosecutions.

Mr. Scott, the Joint Magistrate of Tanjore, thinks it very doubtful whether it is possible to adapt One Code to the many different Nations under our Rule, but thinks that as far as is possible that Object has been attained by the present Code. He thinks it well adapted, but thinks much depends on the Law of Procedure, which will be a great Assistance, for even supposing that it can be translated (a Point much to be doubted); most of it is so fine-drawn that it will never be made intelligible to the People or to the Native Authorities.

Mr. Pycroft, the Joint Magistrate of South Arcot, has a high Opinion of the Wisdom and humane and enlightened Principles of the Code ; but he thinks there are a few Things in it that require Modification.

Mr. Freese, the Magistrate of Chingleput, thinks that the Code fails in Precision and in Clearness, and that the Mass of Notes, Illustrations, &c. have not only swelled the Work to an inconvenient Size, but have also rendered it a more closely sealed Book to the Mass of the People.

Mr. Cochrane, the Joint Magistrate of Cuddapah, records his Opinion, that in framing a Code like the present One, embodying, as it does, many Points of Jurisprudence hitherto omitted, and aided, as it is, with Illustrations, the Law Commissioners have accomplished with great Success the difficult Task imposed upon them.

Mr. C. J. Bird, the Joint Magistrate of Tinnevely, thinks, that as far as refers to Tinnevely, the passing of the Code into Law will not be otherwise than beneficial, or be regarded with any Hostility to the People.

Mr. Frere, the Acting Joint Magistrate of Coimbatore, objects to the Code being founded upon no existing System which has received the Sanction of Time and Practice. As far as it fixes uniform Enactments in Cases hitherto disposable according to the Mahomedan Law, it is advantageous ; but he deprecates the utter Abolition of those Enactments which have been the Result of accumulated Knowledge and Experience, enacted by a Succession of eminent Men who have presided over the Councils of India, and adapted to local Habits and Peculiarities. He does not think the Discrepancy between the Regulations of the Three Presidencies an Argument for superseding them altogether, but would rather cancel the Defects by Comparison, leaving such Differences as the various Races legislated for required.

Mr. Rohde, the Acting Joint Criminal Judge at Masulipatam, thinks that as a whole the Code has not been framed as best suited to meet the Wants of the Class of Persons among whom he has passed his Time (the Northern Circars). He thinks its Adoption will introduce or rather increase in our Criminal Courts that Chicanery which at present, so far as his Experience goes, has been confined on the large Scale to Civil Courts.

The late Mr. J. J. Taylor, late Acting Joint Magistrate of Salem, considers the Code a most excellent Work, and well calculated to meet most if not all the Offences prevalent in India, and thinks the Penalties adequate and proper.

Mr. Sharkey, the Principal Sudder Ameen at Honore, after discussing the Necessity of the proposed Code, whether its Provisions embrace the Crimes of India, whether its Enactments are generally applicable, and whether the Penalties are suited both to the Offence and to the People, thinks that on the whole the Code is in every respect admirably adapted to the Country and People for whom it is designed.

Tombesamy Moodely, Serishtadar of the Zillah Court of Combaconum, thinks that the Penal Code is framed with excessive Lenity and Moderation, and would have the Awards more severe.

V. Streenevasiah Naik, Serishtadar of Chingleput, thinks that the Principle of the Punishments laid down in the Code are not sufficiently explained to enable him to judge of the Severity or Lenity of the Punishments.

But it is not a little remarkable that this Man, a Brahmin himself, remarks on the Desire of the Law Commission "to save Englishmen of the worst Description from being placed in degrading Situations, and engaged in the ignominious Labour of a Gaol, equally with the Natives of India." He compares it with the Indulgence of the Hindoo Law in favour of Brahmins, ridiculed by the European Nations, "and concludes that any Distinction made in the Punishment of Englishmen and Natives" will, instead of upholding, lower their Character in the Eyes of the Public.

CHAPTER I.

General Explanations.

Mr. John Fryer Thomas, Sole Commissioner for investigating the Carnatic Claims, proposes to add an Explanation to the Exception which declares *Harbour* given by certain Relations of the Offender no Offence, specifying their Relationships more explicitly. He thinks this Exception ill suited to India, as the Relationships are very wide, and they are almost always in some Way implicated.

Mr. George Bird, the Criminal Judge of Canara, thinks that the Word "Passion" which occurs in Clause 31, is questionable, and had better be omitted.

Mr. Pycroft, the Joint Magistrate of South Arcot, considers that the Definition of a "Judge" in Clause 12 does not apply to a Magistrate, or even to a Criminal Judge in an appealable Case. Hence in these Cases a Contempt would not be punishable under 197 ; and it is questionable whether in trying a committable Case these Officers would be liable to Clauses 141, 142, and 143. He considers that various Persons employed in public Business would not come under the Definition of public Servants in Clause 14, such as Jevab Neveesces or Gomastahs, so that in event of Corruption they would not be liable to Punishment under Clause 138.

CHAPTER II.

Of Punishments, and Note A.

Mr. Dickinson, the First Judge of the Court of Circuit in the Southern Division, remarks, that "the Extent of Punishment that may be inflicted is in many Instances far too unlimited to be with Safety introduced into Practice."

He regrets the Abolition of Flogging, and thinks that if the Persons who framed it had been acquainted with the Mofussil they would have known that the Indian Thieves hardly consider Imprisonment a Punishment, and dread nothing but the Cat.

Flogging, as prescribed by the Regulations, cannot be called cruel, and from a "squeamish Fastidiousness" the Commissioners would abandon the "most effectual Check to Crime."

Mr. James Thomas, the Criminal Judge of Rajahmundry, says, "On Chapter II. of 'Punishments,' I would offer a Remark, that the Power vested in the Government of each Presidency is calculated to introduce a very great Evil, that of great Uncertainty and Inequality of Punishment. I consider Clause 43, by which a Governor can banish for Life one considered by the Judicial Tribunal sufficiently punished by a Sentence of Seven Years Imprisonment, as exceedingly objectionable, and liable to great Abuse. The same Remarks apply to Clause 44."

"The Code does not provide against the Imposition of excessive Fines in heinous Cases. The Argument for Limitation of Imprisonment applies equally to Fine. He therefore considers Clause 50 objectionable, and would suggest that in all Cases a Maximum of Fine be fixed."

He thinks the Commissioners have not used sound Discretion in abolishing Stripes, as they are most efficacious in Cases of Robbery and Theft. His Opinion is, that Perjury is best punished by Exposure and Stripes.

If Transportation is to be always for Life, the Consequence will be, that it will be less often awarded, and thus heinous Crimes will be inadequately punished. He proposes that Seven, Fourteen, and Twenty-one Years be awarded.

Mr. Kindersley, the Magistrate of Tanjore, says, "Its (the Code's) Lenity I consider to be also quite unsuited to the State of Society in India. The entire Abolition of Corporal Punishment, when there are such Multitudes to whom the only other Penalty to which they are liable is no Punishment, is, I think, to be lamented."

The Feeling of Horror for Transportation is beginning to wear off, from the Accounts of Sepoys and escaped Convicts; a Fact best proved by the general Emigration to Mauritius and to the Eastward; and he very much doubts "whether Transportation will be found to supersede the Necessity for Capital Punishment in putting down what may be called the national Crime of Gang Robbery."

"The Proposition of making the Property of Persons sentenced to Fine liable for the Amount for a Period of Six Years, instead of commuting it for a certain Length of Imprisonment of either Description, appears to be open to very serious Objections." The Code of Procedure will settle how the Distress will be levied, but as it must be either at the Instance of the Magistrate or Prosecutor, it will entail never-ending Suits, &c. It will tend to gratify the Malignity of Prosecutors, and to allow Persons to go really unpunished. The Object is to enforce Payment of the Fine; and the simplest Way of doing so, when there are the Means, appears to be the existing one, of making an irksome Period of Imprisonment the Alternative.

Mr. Anderson, the Second Judge of the Court of Circuit in the Western Division, approves of "all that is said as to the Restriction of the Punishment of Death."

As regards Transportation, he thinks it should be for Life, and applauds the Intention of Commissioners with respect to Imprisonment and Prison Discipline. He thinks that on the Obtainment of such a Discipline it will be Time enough to abolish Tasheer and Flogging.

He thinks Forfeiture of Property a most proper Punishment for Persons guilty of high political Offences; and generally, that Fine is a Punishment that has great Advantages; that great Discretion is an Evil; and that the Refusal of the Commissioners to let Imprisonment remit the Fine in default of Payment is to be commended.

Mr. Malcolm Lewin, Acting Second Judge of the Provincial Court in the Centre Division, considers that "the Objections to these Clauses (43 and 44) are very obvious, and the Reasons found for them in Pages 4 and 5 of the Notes by no means reconcile the Mind to them; that they are likely to cause Hardships; and that the Natives, having now lost the Respect for English Character, know that there are good and bad of all Nations. Even our Instability is not sufficient Excuse for so illiberal a Clause."

"The Object in view would be better secured by sending out of India Men of Rank and Station, whose Conduct, though it should not bring the Agents under the Lash of the Law, is capable, as proceeding from Parties in immediate Connexion with the Government, of furnishing an Example more injurious to the Character of the Government than the worst Acts of Offence which occasionally expose some insignificant Offender to legal Penalties."

Mr. Harrington, the Acting Second Judge of the Provincial Court in the Southern Division, "is opposed to the Abrogation of Corporal Punishment, which he thinks should be left discretionary with the Authorities formerly exercising it to exercise again. There may be Cases in which its Infliction would be objectionable, but I am convinced

" that there are others in which it is essential, and I would recommend the above Discretion being granted." Such Discretion he would also extend to Cases of Exhibition on an Ass of Persons convicted of Perjury, and Forgery and Subornation and Abetment of each. These Crimes have prevailed so greatly in the Southern Division that it would be wrong to mitigate the Penalty. He would not do it on the hardened, but on the respectable, who feel the Degradation effectually.

He is opposed to Clause 57, as explained in Note A. Not to give Persons the "Choice of paying with his Person or his Money is all very well ; and if a Man who *has* Money will hold out, and not pay it, and so chooses to submit to a Period of Imprisonment, he may perhaps be not unreasonably held responsible for the Payment of the Fine nevertheless ; the Confinement which he has undergone being regarded as no more than a reasonable Punishment for his obstinate Resistance to the due Execution of his Sentence ; but I cannot think it just, where all has been fair and straightforward on the Part of the Offender, where, from absolute Want of Means, he has endured Imprisonment in lieu of Fine, to lay such a Clog on his future Industry as to render any Property he may acquire liable for the Amount of the said Fine within Six Years after his Sentence."

Mr. Boileau, the Third Judge of the Provincial Court in the Western Division, enters his Dissent " from their (the Law Commissioners) Advocacy of the Abolition of Flogging. The youthful Offender would be the only Person he would spare, as Flogging leaves indelible Marks."

He thinks the Rigour of the Code in the Case of Banishment too great, and that to create Terror the Boundaries of Crime are confounded.

Mr. John Fryer Thomas, Government Commissioner for the Carnatic Claims, speaking of Fines, says, " I do not consider the Right of Appeal, which it appears from the Notes, Page 6, it is intended to provide, a Security of any Value against an Abuse of large Discretion. It will be found, I fear, in Practice, productive only of still graver Evils ; for an Appeal in a Criminal Case in this Country, if it is to re-open the Case for further Examination, must lead to most extensive Perjury ; and if it consists only in the Substitution of the Judgment of a Controlling Officer on the same Matter and Facts, who is in the higher Court, not as in England from tried Ability, but from the mere Circumstance of Seniority or better Interest, it must as often happen that the Judge on the Spot, who knows the Circumstances of his District, and the Necessity for checking particular Crimes, will be more competent to decide what is and what is not an excessive Fine or other extreme Penalty than the Controlling Officer."

He approves of the Restriction of the Penalty of Death, but would extend that Penalty to returned Convicts. The Abolition of Tasheer meets with his Applause, as he thinks such Exhibitions do not tend to repress Crime, and they are open to the strong Objections urged against them. He wishes that Executions were made more solemn and imposing.

The Intention expressed by the Commission of framing the Law of Criminal Procedure (see Notes No. 10.) *so as to facilitate the obtaining of Reparation by the Sufferer*, and to make One Trial do the Work of Two, will, he trusts, be realized ; it will be a most important Improvement.

He thinks the Abolition of Flogging a Defect, as it is good both for old and young Offenders. The Omission is not supported, so far as he can see, by any stronger Reason than that the Government has already partially abolished Flogging. The other Arguments used in the Notes, Pages 12, 13, prove nothing against a judicious Use of this Species of Punishment, but only that there are Cases where it would be an aggravated Punishment, and ought not to be inflicted. " The Argument of Cruelty is of no Force where everything is regulated ;" and he is at a loss also to understand why the Legislature should refrain wholly from doing that which every Parent in his Family would do. It would have been better not to have renounced it, but to have kept it within its own Bounds, where it is the best Punishment." He concurs entirely in the Views of the Commission (see Notes Page 13.), in deeming it inexpedient to authorize Flogging in the Case of Police Peons, as he has known. Even the Imprisonment authorized by Section XI. Regulation XIII. of 1832, Madras Code, " induce respectable Men to throw up the Office of Gaol Peons, and it is certain that if we degrade any Class of Officers we shall never have any but the most disreputable Members of Society holding the Office"

The Commissioners allow the Defect of long Imprisonments as a Punishment, and hope by Gaol Discipline to shorten them. The Practicability of that is somewhat doubtful, as the great Class of Offenders are those who know not the Luxury of a daily Meal, and as Government, it is feared, never will subject its Criminals to greater Privations than at present, it will be difficult to make the Gaols very irksome.

Hard Labour must only be used sparingly among a weakly People, and solitary Confinement to those who can sleep so much as the Natives, and who are so devoid of Energy, is scarcely a Punishment. He would deem it far preferable, therefore, not to wait for this Event, but at once to remove from the Code this great Defect, and limit the Term of Imprisonment, in the Majority of Offences where Fourteen Years is now authorized, to Ten or Eleven Years, " especially as the Natives cannot compute Time, and all that is felt is a long Separation. Therefore long Imprisonment is needless ; and,

except

" except in the Cases of the Leaders of Gangs, Six or Eight Years in general Cases is quite enough."

He would only leave the present Terms of Imprisonment in the Case of " Suborners of Perjury or Forgery, the Leaders of Dacoits, and similar Offenders of great Criminality, or more raised in Society. If a System of Prison Discipline shall eventually be enforced which shall not increase the Mortality in Gaols, and yet be found to add so much to the Severity of Imprisonment as to make the Punishment greatly dreaded, then, in lieu of a Reduction in the Terms of Imprisonment provided in the Code, a Reduction might safely be made from the more limited Terms here proposed, for a few Years really severe Imprisonment is much more effectual than the present lax System."

He throws it out for Consideration, whether the Efficacy of Imprisonment might not be heightened by " the total Seclusion of the Prisoner from his Family, and by excluding him from all Communication, not only with Relatives and Friends, but from all others but Prisoners, during his entire Imprisonment, when short, so as to see nothing but the Gaol Wall and the working Yard."

Mr. Edward Bannerman, the Judge and Criminal Judge of Salem, remarks that " a new Feature presented by the Code seems to be the general awarding of Part of the Penal Fine to the injured Party, and this, for various Reasons, seems a great Improvement on the former Law.

" The next new Feature seems to be, the graduated System of fining for false Charges and Evidence, and for Acts tending to inculcate the innocent. He approves of this, and thinks that the falsely accused should get Compensation.

" In regard to Transportation, he would submit that in some Cases it should be declared whether the Transportation is to be with *rigorous* or *simple* Imprisonment. There is in Penal Colonies a continual Tendency to relax in this Particular, and therefore the Sentence in such Cases should be very express and stringent.

" In regard to rigorous Imprisonment, it may certainly in a great degree be made to supersede Corporal Punishment; still this Punishment should be resorted to in some Cases of Theft, but not publicly. On the other hand, some hardened Thieves cannot be made to feel except through their Skins; and in many Cases the mere Imprisonment punishes the Delinquent less than his Family deprived of his Labour."

Mr. F. M. Lewin, the Criminal Judge of Combaconum, thinks that the Abolition of Corporal Punishment is a very injudicious Measure, and the Reasons assigned unsatisfactory. He doubts the Fact that the Abolition of Flogging has answered, especially in the Native Army; for the Fear of Corporal Punishment is the best Preventive in a Native against Crime. The Bengal Magistrates Opinions are given against flogging Peons, but not against flogging Felons; and if we may not flog Thieves before they come to the Gaol, we by Parity of Reason must not do so in Gaol; and how is Discipline to be maintained? Such an Act will not raise our Character in the Estimation of the Natives, who look more to Rigour and to active Decision for Protection than to mistaken Lenity to Felons.

He thinks it an Error not to award Death in Cases of Gang Robbery, and the Reason that it will be an Inducement to spare Life mistaken, for Gang Robbers do not regulate their Conduct by the Code, and their Murders generally spring out of Circumstances on the Spot.

The great Object being to put down this Evil, and it being found that the present System has completely failed, such Things will continue until it is known that all who join in such Things may suffer Death.

Mr. George Bird, Judge and Criminal Judge of Canara, remarks, on Clauses 43 and 44, that " These confer Power of increasing the Punishment in some Cases which would be objectionable. With reference to Note A, there might be separate Gaols for Europeans on the Hills, Bangalore, or in a Climate where Hard Labour would be less likely to tell on a European Constitution,"

He thinks Clause 54 extremely objectionable, and that it should be left to the Courts to adjudge adequate Punishment for the Nonpayment of any Fine. Seven Days Imprisonment is no Punishment; and all know the Difficulty of distraining in India, from the Facility of bringing Evidence of Mortgage, &c.

He considers Clause 57 " hard upon innocent Heirs, and unnecessarily severe," and Clause 60 unnecessarily particular, and unintelligible to our Indian Community."

Mr. Freese, the Acting Magistrate of Chingleput, coincides generally in the Opinions expressed and Arguments adduced in this Chapter, with the Exception of those relative to the total Abolition of Corporal Punishment. These he considers theoretical, as most Offenders are of the lowest Classes, to whom Imprisonment is no Punishment at all, and there appears to be no Penalty so well adapted to the Cases of such Offenders as that of Corporal Punishment. He does not advocate the flogging of Police Peons; but for petty Thefts, &c. he would leave the Power in the Hands of the Magistrates. He considers the affixing a minimum Punish objectionable, as mitigating Circumstances may appear.

Mr. Strange, the Joint Criminal Judge of Tellicherry, remarks, on Clauses 43 and 44, whatever is to operate as a Punishment of an Offender should undoubtedly be awarded at his Trial by the Authority vested with the Cognizance of his Crime. Any Commutation of this Sentence that may take place afterwards should be on the Side of Mercy; not in Enhancement of the Penalty thought adequate for his Offence by the Tribunal which

has to decide on the Question. But we may presume from the Words, "without the Consent of the Offender," that the Code contemplates increased Punishment; thus there are Offences punishable by Two Years Imprisonment, by incurring which a European is liable to Banishment for Life, such as those specified in Clauses 180, 199, 304, and 319.

In Clause 45 "the Prisoner seems to be invited to judge of the Punishment to which he may fitly be sentenced, without reference to the Provision which the Law may have made for his Crime, or to the Judge to whom the Application of the Law is intrusted." This Provision will subject Government to a Flood of Applications which there will be no Time to enter into.

He thinks there should be a Difference in 49 between ancestral Property and that acquired after the Offence. If debarred from enjoying the Results of his Labour, a convicted Person must beg or steal.

Clause 54. The Term of Imprisonment in default of paying a Fine should be extended to One Month, for Natives are fertile in Expedients to avoid Payment, yet Time should be granted to him to realise the Amount. This will be more necessary under the Code, where the Fines are many, and the Natives of India have seldom ready Money.

"In Clause 61 the Judge should be bound to make up his Mind as to the particular Crime of which he holds the Prisoner guilty. When Cases may arise not clearly defined or provided for by the Law, the Legislature is properly the Authority by whom the Deficiency should be supplied. One Object of providing Punishments being to prevent Crime by overbalancing the Temptation to commit it, the Measure of Punishment should be clearly announced."

Mr. Anstruther, the Acting Criminal Judge of Madura, considers that "Clauses 43 and 44 are exceedingly unjust."

"Clause 51. It seems vain to sentence a Person to a Fine and Death, as why should he pay it? If he did, his Heirs, not he, would suffer."

"Clause 52. A Fine being illimitable should not be commuted to a Quarter of the regulated Imprisonment."

"Clause 54. Seven Days is not equivalent to illimitable Fine."

"Clause 57. The Death of the Defaulter in Gaol, possibly by reason of his Confinement, should be a Set-off against much or all of the Debt."

He thinks that unseemly Punishment has little Effect when compared with ocular Punishment, and he approves of light Penalties, often inflicted, as likely to produce a greater Effect with a smaller Quantity of Punishment. "The Principles on which the Code proposes to levy Fines seem very good, but the Abolition of Corporal Punishment is impracticable."

Intelligent Natives generally think that constant living Examples of Punishment have more Effect than Death or Transportation, as the first Two are speedily forgotten by those likely to commit Crimes, who are a Class notoriously unreflecting.

Mr. Anstruther thinks that if by Punishments actually less severe we can ensure the proper End, we ought not to refrain from adopting them, from a Distastefulness to civilised Minds; and he accordingly proposes Amputation should be adopted.

The Natives, who have watched both the ancient System and our own mild and enlightened one, all advocate a Recurrence to this Practice. At the same Time their Advocacy of it is known to be repugnant to European Ideas, and therefore they hesitate to express it freely. The Punishment at present awarded for Gang Robbery is found too mild to check the Crime; and he knows that One Member, if not more, of the Civil Service, of great Experience, is of opinion that some Examples of Death awarded in Cases of atrocious Gang Robbery are required; yet Amputation is more merciful, and as the Necessity is evident it ought to be adopted.

He thinks Judges should have more Discretion, and instances Fourteen Years Imprisonment being awarded in Two Cases in the same Sessions, one where in a Famine a Person stole One Pice worth of dry Grain, and the other where a violent Gang Robbery, with most aggravating Circumstances, was committed.

Vide Note A.

Mr. E. Maltby, the Joint Magistrate of Canara, considers that "another important Part of the Code is an intended* Enactment, that in Cases of Felony a Criminal Prosecution is not to be a Bar, as in England, against the injured Party seeking Redress by a Civil Action. The Character of the Natives makes me apprehend that Advantage would be taken of such a Clause to institute Prosecutions (for which the wording of the Code affords Facilities) where a Civil Action would be the more proper Course, in order that the Delay and Expense of a Suit might be diminished." It is further liable to the Objection of having Two separate Proceedings for One Act. The Amount of the Fine imposed might be appropriated to recompense the injured Party. He would retain this Proceeding in 284 and 286.

"The Punishment of Death is proposed to be limited to Two Offences; Murder and the highest Class of Crimes against the State." He coincides with the Reasoning for this Limitation, but would include, "setting fire to Dwelling Houses, Gang or Torch Robberies at Night, accompanied with wounding, and the Pollution of Mosques or Temples for the Purpose of creating popular Disturbances, as Loss of Life is generally a Consequence of such Acts. Transportation is now losing its Terrors, and will soon cease to effect a wholesome Fear."

"The

“ The Abolition of Corporal Punishment is a Part of the Code to which he is decidedly opposed, yet he would limit it to Cases of Robbery and Theft, as those who commit such Things are generally Persons to whom Imprisonment has no Terrors, as they are harder worked in gaining their Subsistence than in Gaol.”

The Fewness of Prosecutions must not be taken as a Proof of the Want of Crime, as Persons may abstain from prosecuting where the Punishment awarded is inadequate, and People will be very apt to take the Law into their own Hands. The general Feelings of the Natives are very much against the Abolition of Corporal Punishment.

Mr. S. Scott, the Joint Magistrate of Tanjore, with great Deference proposes that Death should be awarded for Dacoity. His Experience shows that this is necessary, and it is a systematic Trade to which those who practise it are brought up, and taught to consider it a legitimate Means of Livelihood. They are a distinct Fraternity, and the present Punishment has not decreased them. He regrets the Abolition of Corporal Punishment, and thinks it absolutely necessary, unless Prison Discipline is made really irksome. At present a petty Thief would associate with Felons of every sort. He observes that neither the Object nor the Necessity of Clause 44 is very apparent, and that by it a Man who has caused voluntary Hurt is liable to be banished for Life. He thinks, if it be necessary to remove turbulent Characters, “ it would be more in keeping with the Dignity of Government to arm it with the Power, to be used at Discretion,” than to throw the Onus of a despotic Act on the Penal Code; and though at First Sight it may appear more arbitrary to make this Power discretionary, in Practice it is less so, as Government would be very cautious how it made use of such a Power. He would limit the Power of Government, in 45 and 46, to Death, Transportation, and Confiscation. In other Cases the Court's Decisions should be final. He does not approve of 57, as if poor the Offender cannot pay the Fine, and if he obtain Property afterwards it does not appear just to make that answerable.

Mr. Cochrane, Joint Magistrate of Cuddapah, objects to the Arguments of the Code in favour of putting no Limit to Fines; and though he admits the Difficulty of making One equally painful to all, he still hopes that a Limitation will be made, so that it may be an Object of Terror to the rich, and yet some Protection for poor Offenders. The present System of unlimited Fine will be likely to make the rich in all Cases appeal to a higher Court. He disapproves of the Abolition of Tusheer, as the Effect has been most admirable, and a Man of really sensitive Feelings will be guarded by that very Quality from doing dishonourable Actions, and though no Doubt it is very unequal, yet he attributes that to the Distinction of Castes. The Crime of Perjury is so prevalent, and the Proof so difficult, especially among the higher Orders, that it would be well to retain so effectual a Check; and as he differs from the Opinion that the Inequality of the Punishment depends exclusively on the Feelings of the People, he cannot coincide with the Proposal for its Abolition. If the Crime be committed by sudden Temptation by a respectable Man, Mitigation is always in the Powers of the Judge. However much the Prison Discipline may be improved, he cannot but regret the proposed Abolition of Flogging, as there are in every Zillah a set of able-bodied Men, who live by plundering, to whom Flogging is painful, but not ignominious, and who find Imprisonment no Penalty.

Mr. H. Frere, Joint Magistrate of Coimbatore, agrees generally with many of the Arguments against Flogging, and thinks that if the State of Society in India were like that in England the Abolition would be attended with good Effect, but that the Semi-barbarism of India will hardly admit of it, for Banishment and Separation from Friends have but little Effect upon Men destitute of all fine Feeling, and therefore Flogging should be continued. For its Abolition there is no immediate Necessity, though every humane Person would gladly see the People so improved as to be able to do without it.

Mr. F. N. Maltby, the Acting Sub-Collector of Canara, proposes that the Punishment of Death should be extended to those who pollute Mosques, as they are invariably attended with the Intention of causing or the actually occasioning Death. He approves of Transportation being always for Life, but protests against the high Wages and comfortable State of the Convicts in the Penal Colonies. Approving of the Principle, he does not think that the awarding Compensation to Persons feloniously injured will have a practically good Effect in the Country, as it would cause false Charges, throw Suspicion on the Evidence of Prosecutors, from their Interest in the Case, and thus retard the Course of Justice. He thinks that as far as the Individual is concerned, the Arguments for the Abolition of Tusheer are unanswerable; but Prevention being the great Principle of Punishment he doubts the Propriety of the Measure. This he thinks applies to Flogging, which he considers a Punishment absolutely necessary, especially by a Magistrate, in many cases of Emergency, as at Fairs, and in Famines, when Imprisonment is a Blessing.

The late Mr. J. J. Taylor, Acting Joint Magistrate of Salem, objects to the Omission of Corporal Punishment, a Description of Penalty that he has always found best for the Suppression of petty Thefts; but he has no Doubt that it will be rendered unnecessary when the System of rigorous Imprisonment comes into full Operation.

Mr. J. J. Cotton, Assistant Criminal Judge of Combaconum, thinks the Restriction in Capital Punishments founded on a mistaken Notion of Lenity, as the Crime of Murder is so abhorrent to Human Nature that few Gang Robbers would commit Murder solely to remove Witnesses. As he considers Expediency the Measure of Punishment, the Crime of Gang Robbery should be more severely punished than it is at present, as it is attended

with Two Aggravations,—Repetition and Cruelty; and as the Crime, when once commenced, is more difficult to put down, he proposes severe Punishment for the Ringleaders. The present Punishment he conceives is quite inadequate, and therefore proposes Death for Gang Robbery. As the Gang Leaders are often rich from Booty, and as unless the Property be fully, identified, the injured Person does not recover it, he thinks that a Civil Action should lie for the Amount of the Property lost, as also for any Hurt inflicted.

He thinks Corporal Punishment that which the Natives dread most next to Death. Contrition is never displayed by them on receiving their Sentence of Imprisonment, and they often try to get into Gaol again. The Lash is no Disgrace to the low-born, and it is inflicted on the higher Castes only for the great Crimes of Perjury and Gang Robbery. He highly approves of the System of fining, which he would levy by Distress. Perjury and Forgery are not sufficiently checked by the present Punishment (perhaps from the Dilatoriness of the Proceedings), and therefore he deprecates the Abolition of any Part of the Penalty, and especially advocates a judicious and rigorous Administration of the Lash in such Cases.

Mr. Pelly, the Joint Magistrate of Bellary, thinks Clauses 43 and 44 apply to Persons of English Parents born in India, and Persons of Asiatic Parents born in England. The first being banished would become a Vagabond without a Parish; and the other, in every respect a Native, may be banished, and claim Protection from his Parish in England. He asks whether in 49 Property entailed on A's Son would be forfeited to Government.

In Clause 57 he thinks that though the Liability of the Offender to pay the Fine should extend to Cases where he has been a real Gainer by the Injury, and thus becomes a real Debtor to the Sufferer; yet in Cases where there is no Loss Imprisonment should suffice the Court, as the Offender on his Release will be obliged to make over the Profits of his Calling to the Court, and thus a Premium and Inducement to Idleness will be given.

Mr. Sharkey, the Principal Sudder Ameen at Honore, objects to Fine being unlimited where none is expressed, and also to Imprisonment not being taken in satisfaction of Fine. On the first of these Points, he thinks it would defeat its End, as the Judge would have the Circumstances of the Man rather than the Heinousness of the Crime in consideration, and thinks the Discretion granted to the Judge capable of much Abuse; besides it is impossible to say how much a particular Fine will be felt. He thinks it an Error to suppose that the Amount of the Fine is the sole Punishment; the Shame is not taken into Consideration; nor is a Sum of Money a Matter of Indifference to any one in this Country. He thinks there is an Analogy between Fine and Imprisonment, as there are many to whom the latter is a Matter of perfect Indifference.

He accordingly proposes the System of paying in Person what cannot be done in Purse, and having One limited Fine for each Offence.

He thinks that the Second Point to which he objected will render the whole System of fining nugatory, and be a fertile Source of Evil, even after the Seven Days Imprisonment. Supposing a Man never attains sufficient Property to pay the Fine, public Justice remains unsatisfied, if the Man is not obliged to pay by Imprisonment. There will also be no one to exact it; and if after a longer Imprisonment you strip him of any Property he may attain in Six Years, to pay the Fine, it will be a Case of extreme Cruelty.

He thinks the Analogy between the Civil Debtor and the Criminal incomplete, and the Mode of Procedure proposed unworthy of Adoption. He proposes therefore to cancel Clause 54, and levy the Fine by Distress, and if not to imprison proportionably to the Fine.

He thinks there is an Inconsistency between the Seven Days Imprisonment when Fine is the Punishment, and the Quarter of the longest Term where Fine and Imprisonment are awarded.

Tambisamy Moodely, the Serishtadar of the Zillah Court of Combaconum, thinks the Provisions of the Code too lenient for the uncivilized State of India. Shows that in ancient Times Dacoity was always punished with Death, and that they never used such extensive or hospitable Gaol Establishments as we do. Gang Robbers do not calculate nice Distinctions of Punishment, and spare Life only where there is perfect Submission. He states that the Fear of Transportation has greatly worn out in India, from the Accounts given by returned and escaped Convicts of their pleasant Life in the Penal Colonies. The Mystery is now gone, and they look to the Separation from their Friends as not longer than a Pilgrimage. Now as this operates on the People he proposes that Death should be awarded for Dacoity, and even Hanging in Chains, giving of course a Power of Mitigation to the Judge. He also proposes as a Punishment for this, Forfeiture of Property, as Cupidity is the Stimulus to the Crime, and a Fund will be obtained to compensate the Sufferers.

He objects to the Abolition of Flogging, as Imprisonment is no Punishment to the low Offender, but merely to his Wife and Family, and Fine is impeachable in the Case of those who possess nothing. Besides, if Flogging be done away in Courts Landholders will not be able to flog their Cultivators, and the Tillage of the Earth will suffer.

The same Remarks apply to Godna and to Tasheer.

Reddy Row, late Dewan of Travancore, and Streenevasiah Naib, Serishtadar of Chingleput, concur in deprecating the doing away with Corporal Punishment.

Mr. Casamajor, the Acting First Judge of Circuit in the Centre Division, asks, why, in Clause 59, the Liability is confined to Six Years. He would put Fine on the same

Footings with Civil Debtors, and require, when the Punishment was undergone, as a Condition of Release, that the fined Person should make a *bonâ fide* Declaration that he had given up all his Goods. He thinks the Doctrine of Fine embarrassed by being too comprehensive, and by certain Omissions. He would distinguish Fine from Restitution, and then he would allow Imprisonment to be a Substitute for the latter. He thinks that Fines might be levied as Civil Decrees are executed, aided by an Enactment rendering null all Transfers of Property by those accused till after the Execution of the Sentence. He thinks the Proportion between Fine and Imprisonment should be made more with reference to the Offender than the Offence, and should vary inversely. As a Man is rich, Fine is light and Imprisonment severe, for he is withdrawn from his habitual Pleasures. To the Poor the Fine is more severe, and Imprisonment comparatively a trivial Punishment.

CHAPTER III.

"General Exceptions," and Note B.

Mr. James Thomas, the Criminal Judge of Rajahmundry, thinks that Chapter III. had better be left out, as the Persons who would administer the Law would not need this Instruction. This also applies to the Provisions concerning the Right of private Defence.

Mr. Malcolm Lewin, the Acting Second Judge of Circuit in the Centre Division, thinks that in Clause 76 "the Right is made to depend on an Offence untried, on a finite Punishment awardable under a certain Statute to Circumstances not yet proved. The same Principle is carried on in the other Clauses." There is an apparent Safety in the injured Party having a given Point to prove; but in Matters of personal Aggressions legal Deductions could not be often considered. The Law of reasonable Apprehension pre-supposes more Education than the Generality of People possess. It would be better to leave the Justification, where the Aggressor is the stronger Party, in the Hands of the Judges or Jury. The same applies to 75, where the Case is that of a public Servant, with the Advantage of being supported by others, especially as the Indians are too prone to succumb to Oppression. He thinks a Difference should be made between an Officer acting on his own Authority and one armed with another's Warrant. In the latter Case Resistance should be deemed an Offence. The Indian cannot comprehend the Right of private Defence, which should be encouraged. Paragraphs 2 and 3 of 75 appear most excellent, and founded on the first Principles of Justice.

76.

Mr. Harington, Acting Second Judge of the Provincial Court in the Southern Division, is apprehensive "that Clauses 76, 77, 79, and 80 would be liable to deter from Exertion for the Protection of Person and Property, by creating a Doubt how far the Circumstances attending any particular Case warrant Exertion."

76, 77, 79, & 80.

Mr. John Fryer Thomas, Commissioner for Carnatic Claims, thinks Clause 75 requires Correction, as the Degree of Harm necessary to be inflicted is indefinite, and the Varieties not defined. He suggests, as an Improvement, "The Right of private Defence in no Case extends to the inflicting of Harm manifestly and clearly unnecessary to inflict for the Purpose of Defence."

75.

In 79 the Code he thinks draws no Distinction between a Hut built with a few Boughs and a permanent Dwelling. He would not give the Owner of former the Right of slaying another in the Defence of the Property therein.

79.

Mr. E. Baunerman, Criminal Judge of Salem, would insert in the Third Line, after Assault, "Demonstration of Assault," so as to include levelling a Gun, &c.

Mr. George Bird, Criminal Judge of Canara, thinks 62 objectionable with reference to the Nature of the People that are to come under the Law. He would omit 70, 71, 72, and 73, and thinks, in 79, that the Right of personal Defence (especially in India) might extend to many of the Offences enumerated in this Clause, without the Restrictions mentioned in Paragraph 3, Clause 75.

62.

70, 71, 72, and 73.

79.

75.

62.

Mr. Blane, the Magistrate of Cuddapah, says, in Clause 62, "This appears to me to be too general in its Application, and contrary to the Maxim '*Ignorantia legis non excusat*.' In the Illustration (a) the Soldier is supposed to fire on the Mob in conformity with the Commands of the Law. In this Case he of course commits no Offence. But he may in good Faith believe himself to be commanded to do that which *in fact* is contrary to the Law. He may believe himself to be authorized to fire on the Mob without the Orders of his superior Officer; but would he not be guilty of an Offence if he did so? So also A, an Officer, may in good Faith believe himself commanded or authorized by Law to order his Men to fire on a Mob for the Purpose of suppressing a Tumult, without having been called on to do so by the Civil Magistrate; but as this is contrary to the Law, would he not commit an Offence in so doing?"

Again, in the Second Example (b): "If A, an Officer of a Court of Justice, being ordered to arrest Y for a Civil Debt, believing in good Faith that he is authorized to wound or kill Y if he refuse to accompany him, or to put him in Irons, were to do so, would not his doing so constitute an Offence?"

"Besides, how is a Person's real Belief or Knowledge of the Powers intrusted to him to be ascertained except from his own Assertion. This Plea of a Belief that he was acting legally might always be set up in excuse for the most illegal Acts."

In Clause 79, "If by 'Mischief,' be here meant the setting fire to the Building, Tent, or Vessel, the Restriction requiring that it should be used as a Human Dwelling appears unnecessary and injurious. If I may kill a Man while attempting to rob my Property from a Godown or Tent not used as a Dwelling, surely I ought to be allowed to do so if he attempts to destroy the same Property by Fire."

"The Injury in the latter Case is greater and more certain than in the former; for I might recover my Property if robbed, but cannot possibly do so if destroyed by Fire."

"The Building which another attempts to set fire to may contain all the Property I have in the World, to the Value of Lacs of Rupees; but by this Rule the Attempt to set fire to a Stable full of valuable Horses, a Warehouse, or even a public Arsenal, could not be resisted by killing the Offender."

"In Clause 81, the Expression in the Second Paragraph of this Clause, 'till the Offender has effected his Retreat,' appears very indefinite. What is to be considered as his having effected his Retreat?"

"The whole of this Clause, with the Exception of Paragraph 1, appears open to Objection. In the Notes (Page 19) the Commissioners say, 'It may be thought that we have allowed too great a Latitude to the Exercise of the Right of repelling unlawful Aggressions.' To me it appears by this Clause the Right is too much restricted."

"The Natives of this Country seldom recover from the Panic caused by an Attack, or think of Resistance, till a Robbery has been completed. They cannot, indeed, assemble in sufficient Numbers soon enough. If therefore a Village has been attacked and robbed by a Gang who have effected their Retreat with the Property to a neighbouring Jungle, the Villagers ought not to be precluded from attempting its Recovery, and the Seizure of the Robbers, even at the Risk of killing any of them."

"Again, under the Fourth Paragraph of this Clause, the Defence of Property against Housebreaking continues as long as the House Trespass continues, and no longer; so that if a Man has broken into a House, and carried off Property only just outside the Wall or Door of it, the Owner may not slay him in attempting to recover it."

"In Clause 84 most of the Objections made to Clause 62 also apply to this Clause. A Person's simple Belief on good Faith that Circumstances are so and so ought not to be sufficient. There ought also to be sufficiently strong and just Grounds for his Belief. An Instance has been known of a Gentleman shooting his own Servant, who had come into his Room at Night, mistaking him for a Robber; but he ought not to be held blameless on this Account; he ought to have ascertained to a Certainty that he was a Robber before he killed him."

"So, in the Case put by way of Illustration, Z might stop A on the Road at Night, not 'by way of Jest,' but with the Intention of inquiring the right Road to some Place. If in this Case A, taking Alarm, and believing in good Faith that Z was a Robber, were to draw out a Pistol and shoot Z, the Act ought not, it appears to me, to be held excused altogether by his mere Belief that Z was a Robber, although it would form a reasonable Ground for a Mitigation of Punishment."

62. Mr. Anstruther, Acting Joint Criminal Judge of Coimbatore, thinks that 62 will excuse Village Tallaries if they torture by Order of the Monegar.

68. Mr. Pelly, Joint Magistrate of Bellary, considers that it does not appear in Clause 68 whether the administering an intoxicating Drug to a Person against his Will and Knowledge be made a Crime; yet if under the Intoxication Homicide is committed both the Homicide and the Administerer would be beyond the Law, and the Crime would not be defined.

75. In 75 he thinks the Terms might imply that a public Servant is legally competent to commit an Offence.

CHAPTER IV.

Of Abetments.

105. Mr. James Thomas, the Criminal Judge of Rajahmundry, objects to Intoxication being made a Plea of Mitigation of Punishment, and ranked with Idiocy. He thinks 105 omitting to give Information which he is bound to give a novel Enactment, and no mitigating Circumstance provided.

88 79. - 101. Mr. Malcolm Lewin, Acting Second Judge in the Centre Division, thinks the Distinction between active Participation in 88 and 97, and passive Participation in 101, ill founded, as they are the same in Practice, and proposes the Rule as delivered in the Maxim "Qui non prohibet quando prohibere Potest, jubet." He thinks that the greater Part of the Police to whom Clause 101 applies are hardly distinguishable from the Community and their Influence. As public Servants hardly known, yet the Police generally know the Scheme of a Robbery, and could prevent it if they pleased. Abandonment of Purpose before the Completion of the Crime is Palliation, but not as applies to a public Servant, "because the Crime continues until he has acquitted himself of the Duty of his Office, which lay in preventing it."

He thinks the Punishment in 106 much too lenient, considering its Frequency, and Connexion with higher Crimes.

94. Mr. John Fryer Thomas, Commissioner for Carnatic Claims, thinks 94 will open a Door to malicious Prosecutions, unless the Instigation be confined to some overt Act, like the Illustration.

- 97 he conceives requires a slight Alteration to prevent its including a Class of Cases which it does not intend to embrace; thus substituting, in Illustration C, Murder for Robbery, it would follow that Officers of Police would, like the London Police Officer who allowed a Murder to be committed to get the Blood-money, suffer Death for the Omission to interfere to prevent the Crime. "Now they would not be in League with the Murderers, which is the *Essence* of the Offence in this Clause." He would prefer, by aiding and favouring the Offender in the Commission of that Offence; and the Illustration and the wording of Clause 86 he would alter accordingly. 86.
- Mr. Edward Bannerman, the Criminal Judge of Salein, says, "After Clause 108 the Words 'provided that he knows or suspects the Offence he thus abets' might be inserted." 108.
- Mr. George Bird, Criminal Judge of Canara, thinks 88 would probably be carried too far, and there would be no End to Inquiry and Accusation. Of 90 he says, Bribery to commit an Offence would be punishable under this, and if the Offence were actually committed under 88 also. He asks, in 98 and 99, how is it possible to know what A considered likely to happen, and how is "Misconception" to be proved? 88.
90.
98. 99.
- 106 he imagines insufficient; and the Exception in 107 is objectionable in India, where Relationship is carried to such a Degree. In 113 he would omit from "By-words" to "Representation." 106. 107.
113.
- Mr. Blane, the Magistrate of Cuddapah, says, in Clause 88, "This is a *general* Rule which would appear to be annulled by the subsequent Clauses. By Clause 90, for instance, whoever by Instigation, attended with the actual Delivery of a Bribe, previously abets an Offence punishable with Imprisonment, may be punished with Imprisonment equal to One Fourth Part of the longest Term provided for that Offence." 88.
90.
- Theft is an Offence punishable "with Imprisonment. Under Clause 88 the Person instigating another to commit Theft is punishable, as I understand, with the full Punishment for Theft, but under Clause 90 he is only punishable with a Fourth Part of that Punishment. The only Difference between the Two appears to be, that under Clause 90 the Instigation is attended with Bribery; but that would appear rather to heighten than diminish the Offence. So also in Clause 91. In the Illustration to this Clause it is explained that the Abetment is a Crime, whether the Offence be committed or not; but there is nothing in the Body of the Clause itself from which this can be understood." In the following Clause, No. 91, which is similar to Clause 90, except that the Abetment is attended with the Threat of Injury instead of Bribery, no Mention is made of its being punishable, unless the Offence be actually committed. So important a Matter ought not to be left to be inferred from the wording of an Illustration. 90.
- What constitutes a "Conspiracy" is not defined. Does not a Person who instigates another (as in Clause 90) to commit an Offence by giving him a Bribe enter into a Conspiracy for the Commission of it, and if so where is the Difference between the Two? 90.
- In Practice much Difficulty would be found in determining whether a Person "knew an Offence was likely to be committed or not." In Illustration A, for instance, how could it be possible to determine whether A considered Murder as likely to be committed by B or not? He ought to be liable to the Punishment for Murder, whether he considered it likely or not, as under the English Law. 98.
- Mr. Strange, Joint Criminal Judge of Malabar, does not clearly see the Distinction between Clauses 90 and 91 and those Crimes to which 88, 95, 97, and 100 relate. It should be made more explicit, and if One Fourth Punishment only is adjudged where the intended Crime has not been committed, the Commission of it should be more plainly set forth; yet the Illustration under 90 would show that the Distinction was in some Cases immaterial. On 98 he remarks, that the Attempt to determine whether an Instigator had the Means of knowing the probable ulterior Results, so as to punish him for a higher Offence than he committed, will seldom be made with unquestionable Success. On Illustration A he asks how can a Judge satisfy himself that A thought it likely B would commit Murder. He proposes, as a safe Rule, to consider those Parties aiding and abetting where their Countenance evidently encouraged, whether the Crimes differed or not from that originally contemplated; but that, whatever the Crime was, the Abettor was to be considered guilty *only* of the Crime to which he had lent his Aid, and be considered free from the Guilt of the other resulting Crimes. 90. 91.
88. 95. 97.
100.
- Mr. Anstruther thinks there ought to be a very great Difference between Classes 1 and 2, and 3 and 4, of Abettors. It must be allowed that the Instigator of the Crime is more guilty than he who, being invited, refuses to join in the Crime, but neglects to inform the Police.
- He thinks in 96 the Punishment too slight, as the Instigator here completed his Crime before the Act is begun, so that even if the Plan were frustrated he is not the less guilty. 96.
- Mr. F. N. Maltby, Acting Joint Magistrate of Canara, says, in Clause 90, the Meaning of this Clause is not clear. If it differs from 88, in that the Crime is not committed, the Illustration ought to run, "although B does not give the false Evidence." If the Difference consists in that Bribery is added to the Instigation (as the wording would appear to show), it is not clear why the Punishment should be less. If it consists in that it applies to Cases punishable by Imprisonment only, it is not clear why a different Rule should apply to these Cases. 90.
88.

94. In Clause 94. The Punishment in this Case, as explained in the Illustration, appears, says he, to me to be far too lenient for perhaps One of the most serious Crimes. Surely Transportation for Life ought to be awarded in a Case when a Man wilfully endangers the Lives of Numbers.

98. In Clause 98. "If A consider Murder as likely to be committed by B." It would in many Cases be impossible to tell what A considered as likely to happen. The English Law appears to me to be necessary. The few Cases in which its Universality may render it rigorous may be corrected by the Prerogative of Mercy, as must necessarily be the Case in many Instances, notwithstanding the utmost Precaution in framing the Law.

In Clause 101. This Law appears to me very lenient. A in the Illustration is an Abettor, and his Offence is aggravated by a Breach of public Duty. I should therefore conclude that he ought to be liable to the whole Punishment of the Offence he has abetted.

69. Mr. Pelly, the Joint Magistrate of Bellary, asks whether the Backers in a sudden Quarrel with Fists, as the Seconds of Two Prizefighters, are within the Clause. By 69 it would appear doubtful whether the Principals were committing an Offence.

CHAPTER V.

"Of Offences against the State," and Note C.

115. Mr. James Thomas, the Criminal Judge of Rajahmundry, says that Clause 115 makes a Man liable to Fourteen Years unlimited Fine and Forfeiture, who, after committing a Depredation in a neighbouring State, takes Refuge in the Company's Territory, where possibly his Family may be. He suggests that the Person doing so should be given over to the State wherein he committed the Crime, to be punished by them.

113. Mr. Anderson, the Second Judge on Circuit in the Western Division, considers that Clause 113 has been, with Reason, very generally censured.

Mr. Malcolm Lewin, Acting Second Judge of Circuit in the Centre Division, thinks the same Clause "wholly indefensible," and that the Objections to it are so obvious and so numerous that it seems quite unnecessary to particularise them.

113. Mr. Edward Bannerman, Criminal Judge of Salem, in Clause 113, proposes to omit from "whoever" to "attempt."

111. Mr. Blane, the Magistrate of Cuddapah, thinks that 111 only applies to the Governor General, and who has very little Likelihood of being overawed. It ought to extend to all constituted Authorities under Government.

109. Mr. Anstruther, Acting Joint Criminal Judge of Coimbatore, supposes 109 means whoever of our Subjects; not whoever, without Exception. He thinks Note C raises more Difficulties than it solves. The King punishes as Head of the Government of India; not of Britain. The present Rules are quite sufficient.

CHAPTER VI.

"Of Offences relating to the Army and Navy," and Note D.

118. 119. Mr. John Fryer Thomas, Government Commissioner for the Carnatic Claims, thinks that the Expressions in 118 and 119, Soldier, Sailor, appear to apply only to Men in the Ranks, so that if the Act were that of an Officer, the Abettor would not be punishable. Possibly it is only meant for the lower Grades, but it would be well to define it.

125. By your Illustration to 125 a Man putting on an Officer's Dress would not be punishable.

116. 118. 120. 122. Mr. Blane, Magistrate of Cuddapah, thinks that as it is evident in 116, 118, 120, and 122 that the Instigation to Mutiny, even if it does not take place, should be punishable, it ought to be so expressed.

Mr. F. N. Maltby, Acting Sub-Collector of Canara, thinks that Soldier and Sailor are not defined, and that the various Grades of armed Servants, from an irregular Corps to an armed Peon, would require some Definition. He thinks Sibendy Corps and Police Peons require being legislated for by something analogous to Military Law in case of Desertion in Emergencies.

CHAPTER VII.

"Of Offences against Public Tranquillity."

129. 130. 132 and 133. Mr. Anderson, the Second Judge of Circuit in the Western Division, approves of Clauses 139, 130, 132, and 133, and of all the Clauses in IX., and has the same Remark to make as to most in Chapter X., particularly Clauses from 190 to 199.

190 to 199. Mr. John Fryer Thomas, Commissioner for Carnatic Claims, approving generally of the Enactment, thinks them unwise if applied to Ryots assembled to resist unusual or heavy Imposts, as it is the only Way they can influence the public Authorities; and if a Collector construes every Meeting of this kind into Riot, the poor Ryots are deprived of all Remedy against exorbitant Imposts. He thinks that the Madras Law of Collector and Magistrate being One Person tends too much to oppress the Natives, and to prevent all Expression of public Feeling.

133. Mr. George Bird, the Criminal Judge of Canara, thinks 133 too severe on the Individual who took no active Part in a Riot. 130 would suffice, if not cumulative.

Mr.

Mr. F. L. Blanc, Magistrate of Cuddapah, considers the Difference in 127 too wide. A Meeting of Thousands of Persons to overawe Government is classed with Persons assembling to insult an Individual.

Mr. Anstruther, Acting Joint Criminal Judge of Coimbatore, thinks 137 would at once fall on Missionaries, and be a strong Incitement to rioting, as a Rioter might injure the Insulter, or take Advantage of his own Wrong, by pleading his own Rioting against the Person injured.

Mr. Pelly, the Joint Magistrate of Bellary, thinks the Provisions of Clause 136 objectionable, as they give a Handle to the Creation of a Riot on any Pretence of Provocation. The Law should make Allowance to the Rioter for the Provocation he has received. The Provoker had better be left to the Punishment provided for his Offence in other Parts of the Code.

CHAPTER VIII.

"Of the Abuse of the Powers of Public Servants" and Note E.

Mr. James Thomas, the Criminal Judge of Rajahmundry, thinks that in 138 the Term "expecting to be public Servants" should not be considered in the same Light as Persons actually employed, as the Natives have such general and vague Expectations of Employment that Half of the Community may be included. "Gratification" he thinks not sufficiently precise. Prefers the Madras Regulation Terms, and would omit the remaining Clauses in the Chapter, leaving the Servants to be punished by the Government under which they are employed.

Mr. Casamajor, Acting First Judge of Circuit in the Centre Division, proposes to alter the Title to "Offences by public Servants, as such" as 147, 149 can hardly be called Abuse of Authority. 150 should come under Cheating by Personation. Much depends on the Code of Procedure, viz., how and where 141, 143 are to be tried, and who is to exercise the Powers in 149. He thinks 142 and 143 not likely to be often acted on, inasmuch as Section XII. Regulation XII. of 1802, and Section XIII. Regulation VIII. of 1816, very seldom have been needed.

He thinks 149, as including covenanted Servants, will occasion "great Explosions." This did exist in Madras, but was abolished in 1828. He thinks it should be omitted.

Mr. Harington thinks Clause 138, and most of that from it to 150 inclusive, of very little Use, as most of the Acts must end in Suspension from the Service, as no Government would employ Persons thus punished. He thinks those only advisable where, there being no moral Turpitude in the Case, a small Punishment absolves as it were the Individual; but not where it becomes a Stain on his Character.

Mr. Lascelles, Criminal Judge of Chittoor, highly approves of this Chapter.

Mr. John Fryer Thomas, Carnatic Claim Commissioner, thinks these Enactments injudicious, as applied to Men high in Office, Dismissal with Disgrace being quite sufficient. They tend to degrade both Office and Officer. This he instances by the Removal of a British Resident to a Gaol as being a Case in point, as also a Judge from high Trust and Power being dragged as a Criminal to the Bar. He thinks the Arguments about Tasheer (Notes, p. 12.) apply to this in the Case of respectable Natives. They would avoid Offices that would subject them to such Degradation. This applies merely to Imprisonment. Fine is not liable to the same Objection.

Mr. E. Baunerma, the Criminal Judge at Salem, proposes to insert "or Order" after Decision, as they are often equally culpable and pernicious.

This, as well as 143 and 144, are very important, as recognising the Principle of Impeachment solely on a Judge's Proceedings, as they have hitherto been condemned as resting on mere Inference. Mr. Baunerma pronounces them very judicious as well as important.

Mr. George Bird, Criminal Judge of Canara, thinks there is no Necessity for interfering with Persons not public Servants.

In 141 he would add Fruits and Flowers, as explaining "Refreshments." In 142 he asks, How is Proof of the Knowledge to be obtained? It would open a Door to the Prosecution of public Servants by disappointed Men. 143, 145 are objectionable, and calculated to impede Business, and will be used as such with a view to annoy and hamper Government.

Mr. F. L. Blanc, the Magistrate of Cuddapah, says in the Notes, it is stated that this Clause applies merely to People in public Employ, but this would seem (139) to apply to others. He thinks this Error should be amended in the wording of the Clause.

Mr. Strange, the Joint Criminal Judge of Malabar, thinks, in 142, no wilfully unjust Judge would fail to bring forward some sort of Reasons. Allowing for Perverseness, how could it be known whether the Judge knew his Decision to be unjust?

143. Mr. Strange thinks, "with respect to Europeans, the Expediency of this is highly questionable, especially as their Conduct cannot be said to have raised a Necessity for it."

149. As the present Rules and Means of Punishment will continue, this Clause may be rendered ineffectual by Government suspending a Man from Office for a longer Time than Three Months.

Mr. Anstruther, Acting Joint Criminal Judge of Coimbatore, considers Note E very imprudent, as Government have ample Power to punish their Servants; and the Respect to Officials will be weakened by these Rules, which class a corrupt Judge with Thieves and Forgers.

Mr. Edward Maltby, Joint Magistrate of Canara, thinks the Acts simplify the present System, by leaving the Offences common to public Servants and others to be generally provided for, instead of having separate Tribunals and particular Punishments for Frauds and Embezzlements of public Servants. He, however, thinks, that, as the Law is framed, frivolous and vexatious Charges will be raised, and it will be difficult to inspire Confidence and Independence in public Servants. 138 and 142, "Gratification," is likely to be used by disappointed Persons to cause Annoyance; and the Provision against "knowingly passing a wrong Decision" will be the Cause of Criminal Accusations instead of Appeal. Government can sufficiently provide for the Efficiency of its Servants by the Power of Removal. This is the Case in 149. He thinks the local Government should be left unfettered to do what is needful for securing Subordination and Efficiency.

Mr. C. J. Bird, Joint Magistrate of Tinnevely, does not think the Provisions ample enough. 149 only applies to those who are paid by Salary, Fees, or Land; yet the Term Judge includes Village Moonsidis and Panchayets, &c., over whom it is proper to have Coercion. By the Code they would escape unpunished.

This also applies to the Village Watchers, whose proper Salaries go to the Heads of Villages in Tinnevely. The Punishment for causing Escape is not sufficiently severe, as the Instances are frequent, and the Convictions very rare.

Mr. Halty Frere, the Acting Joint Magistrate of Coimbatore, considers that the Code provides very imperfectly for the Offences specified in Regulation IX. of 1822. For instance, there is none for the Crime of Village Servants making false and fraudulent Entries in the public Accounts concerning the Extent, Value, and Classification of Land; also those mentioned as "the 2d Description in Clause Second of the Regulation referred to." He thinks Dismissal not sufficient Punishment for Offences of this Nature, especially in an unsettled District. He thinks that it may form a Subject for Consideration whether an Exception might not be made to the Rule laid down by the Law Commissioners, that the Property of the State should in general be protected by the same Laws that are considered sufficient for the Protection of the Property of the Subject, similar to that which has been adopted by them in Cases of another Kind in Clause 217. et seq. The Chapter on Revenue Offences contains no Provision bearing any Allusion to the Subject.

Mr. F. N. Maltby, the Acting Sub-Collector of Canara, says, "I am not aware that the Penalties prescribed by this Chapter are unadapted to the Offences for which it provides; but I would beg to offer a Remark upon the Chapter generally. I believe that there are few who have watched the actual working of our Government in the Provinces who have not found Reason to doubt whether, in our Endeavours to protect the People from Oppression on the Part of the Servants of Government, we have not gone too far, and weakened the Power of our Native Servants. It is as necessary that they should be supported in the honest Discharge of their Duties as that those under them should be protected from Oppression. Although, therefore, I do not venture to offer any Remarks upon the Punishment to be awarded when Delinquency is proved, I would beg to observe that it will depend upon the Code of Procedure whether this Chapter is an useful or a most prejudicial one. It must be most prejudicial if the Form of Procedure should allow of public Functionaries being dragged before the Criminal Tribunal upon Charges preferred in the usual Form of Offences under this Chapter. I am sure that not a Native Functionary will feel Confidence in the Discharge of his Duties if this Chapter is enforced by the ordinary Tribunals. It is necessary that the Form of Procedure should be such as shall as far as possible protect the Officer of Government from Annoyance until Delinquency is proved; and I need hardly add how necessary it is that false Charges should be severely punished. Should it be so arranged that a mere Charge of these Offences preferred before a Magistrate shall put the Accused on his Defence before that Tribunal, the Provisions of this Chapter must have a most prejudicial Effect. The Principle of the Madras Code, of making the public Officer amenable to his Superiors, under Rules differing in this respect from the ordinary Course of Criminal Procedure, appears to me to be best adapted to the Purpose."

Mr. Pelly, the Joint Magistrate of Bellary, thinks that the Expediency of this Chapter will greatly depend upon the Code of Procedure. If any public Servant is to be dragged before the Court on any Complaint the Enactments will be highly objectionable. By 141, a Judge corruptly hiring a House below the proper Rent, of a Person who is about to bring a Suit into Court, would not be liable to Punishment.

On 142 he says, "The Word 'knows,' which frequently occurs in the Code, requires a Definition. Is a Person said to 'know' what he is legally bound to know, or professionally (see Clause 263.) is supposed to know?"

Shrenevasiah proposes, in Cases of corrupt Servants, that both the Giver and Receiver of a Bribe should be amenable to Punishment.

"Of Contempts of the lawful Authority of Public Servants," and Note F.

Mr. James Thomas, the Criminal Judge of Rajahmundry, thinks the Penalty in Clause 155 more than adequate to the Offence, and liable to the greatest Abuse in Practice. The same Objections apply to Clauses 156, 157, and 158, and to all the remaining Clauses of the Chapter, especially to Clauses 163, 164, and 171. Clause 182 appears to make Crime of that which is no Offence, while it leads to the greatest Oppression.

Mr. Casamajor, Acting First Judge of the Provincial Court in the Centre Division, proposes, on the Plea of Delay and Obstruction of Business that the present wording is likely to produce, to add, in Clause 156, after "some," the Words "by the Period fixed for such Production or Delivery, without reasonable Excuse, to the Satisfaction of such public Servant or Body of public Servants."

Mr. Anderson, Second Judge of the Provincial Court of Circuit in the Western Division, concurs with the Proposition in Note F, of empowering local Authorities to forbid Things dangerous to public Tranquillity, &c.; and, approving of Clause 182, proposes, as an Illustration, the Disobedience of an Order prohibiting Ballast to be thrown overboard in Harbour.

Mr. John Fryer Thomas, the Commissioner for Claims withdrawn from the Carnatic Fund, in Clause 161, says that the Signature of the Individual who makes a Statement before a public Authority is almost unnecessary when that Functionary attests it, and therefore thinks a slight Fine sufficient, and would declare the Attestation of the public Officer, with an Autograph Note that the Person refused to sign, sufficient Authentication.

Mr. Edward Bannerman, the Criminal Judge of Salem, entirely objects to 168, or at least would insert before "obstructs," "by Act or Threats." He thinks that as the Sale or the Tax may be odious, Government will be glad to have its Iniquity brought to its Notice by the Backwardness of Purchasers. This is legitimate, and so is Conversation inducing the People to hold back. He thinks the Clause of fundamental Importance, as defining the People's Rights of *passive* Resistance to an odious Tax. He thinks the Words he suggests may hereafter be of more constitutional Importance than at present, for it may be that some Freedom of *passive* Opposition may hereafter prove a Safeguard against aggressive Opposition.

He thinks the Penalty in 171 and 173 inadequate, and proposes a Gradation of Punishment. He would make the Rescuer suffer Half the Imprisonment of the Rescued. In the Case of a State Prisoner, the present Clause is quite inadequate.

Mr. George Bird, the Criminal Judge of Canara, thinks Exception in 159 might be allowed on religious Grounds. "Causes Annoyance," in 164, he says is too vague, and 173 insufficient; for instance, the Punishment of rescuing a Murderer or Robber proclaimed.

Mr. Blane, the Magistrate of Cuddapah, proposes, in 153, to insert as an Enactment, "or intentionally defaces any such Summons or Notice" as one may thereby effectually defeat the End.

Mr. Strange, Joint Criminal Judge at Tellecherry, thinks that in 170 if the mock Purchase be clearly fraudulent, the Actors may be punished under "Fraud." The usual Penalty for not completing a Sale would be sufficient in other Cases.

Mr. Anstruther, Acting Joint Criminal Judge at Coimbatore, considers that Note F contains a very mischievous Principle, viz., that Disobedience to a local Order is allowable, and not punishable except when in Appeal the upper Court is satisfied that the Disobedience was attended by Evil or Risk. "If the Punishment be slight, the local Authority suffers; if severe, the Code, having caused the Fault, should not punish it."

Mr. Pycroft, Joint Magistrate of South Arcot, thinks that 152, 153, 155, 156, and 157 may be inadequate in Cases of great Importance, as in case of an important Witness in a Murder Case or in a Civil Suit of large Amount. He thinks the Imprisonment should be increased, and the Fine left unlimited, on the Principle of the Note on the Chapter "Of Punishments."

Mr. F. N. Maltby thinks Note F. is framed on a false Principle, of intrusting public Officers with Power, and at the same Time distrusting their Use of it. At present, an Officer empowered to issue such Rules will have them cavilled at and set aside by the Officer who ought to enforce them. He thinks the Penalty in 159, 160, and 161 insufficient, and proposes "that the Court should have the Power of detaining the contumacious Party till he performs the Act necessary for the Administration of Justice." He states that his Proceedings have often been embarrassed by the Practice of bringing a Charge of Forgery against both the alleged Principal and the attesting Witnesses, in which Case the Police put the Witnesses on their Defence, thereby depriving the Person forged against of the Benefit of their Evidence. He proposes to make them swear to the Truth of the Document; and if a Forgery, to convict them of Perjury and Forgery, but not to entertain it unless the Principal be convicted.

Mr. Pelly thinks that Clause 186 may operate very harshly, and instances a Master threatening to dismiss a Servant, who proposes to make legal Application for Remedy against some trifling Injury received from his Master.

Mr. Sharkey, the Principal Sudder Ameen at Madras, would propose a severe Penalty in 158, did not 154 provide for it, as the Crime can hardly be committed without implying 154.

On 156 he thinks the Imprisonment should be till the Delinquent produces the Document, or it may involve immense Interests. He thinks rigorous Imprisonment for the Offences in 157 too disgraceful, and considers Fine the chief Weapon to be used. 158: he thinks that for Fraud simple Imprisonment, with Fine, will be enough. In 159 he thinks if the Oath be essential to the determining a Suit, the Imprisonment should be till the Oath is taken, which applies also to 160 and 161.

He thinks 162, if connected with private Rights, is downright Perjury, and should be treated accordingly. Clause 164 makes no Distinction between preventing and attempting to prevent. He thinks when actual Obstruction has taken place the Punishment should be more severe than for mere Annoyance.

SUGGESTIONS OF PROPOSED PROVISIONS where the PENAL CODE is at present silent.

Mr John Fryer Thomas, Carnatic Claim Commissioner, thinks that there are no corresponding Rules in the Code for Regulation I. of 1832, and Section VII. Regulation XIII. of 1832, of the Madras Regulations. As Chapters 158 and 160 do not include the Offences provided for, the Power given by the above Regulations is of the greatest practical Importance towards the Administration of Justice, and, whatever the Objections, upon general Principles may be, they are well suited to Southern India.

Mr. Edward Bannerman, Criminal Judge of Salem, submits that the following Offence, which must be very common, is not provided for in the Code. A. advances to Cultivators of Indigo; they engaging to give him the Article at Eight Rupees per —. B., when it is prepared, gets it by giving Nine. A might in many Cases be entirely ruined, and yet there is no civil Redress. He submits that B's Conduct should be made penal.

Mr. George Bird, Criminal Judge of Canara, suggests, that some Provision should be made for Crime committed in Roadsteads, and within Sight of Land, as under the Penal Code every petty Theft committed beyond the Level of High-water Mark would need to be sent to the Admiralty Court at Madras, thereby entailing much Expense and Trouble.

Mr E. Maltby, the Joint Magistrate of Canara, thinks that the Code ought to authorize Imprisonment in those Cases where it is necessary to bind Persons over to good Behaviour, and they fail to produce the requisite Bail.

Mr. Freeze, the Magistrate of Chingleput, considers that no Punishment is laid down for the Punishment of Peons, who, through criminal Neglect, allow the Escape of Prisoners. As this occurs very frequently, something more severe than Dismissal should be awarded.

Mr. Pycroft, Joint Magistrate of South Arcot, thinks that there is no adequate Punishment in the Code for preferring false Complaints, which is a very common Practice in India, and tends greatly to impair the Administration of Justice at present. Regulation IX. of 1816 slightly punishes some Cases, but in most malicious Complaints there is no Penalty. Regulation IX. of 1832 is confined to Ameens or Heads of Police, and does not extend to Magistrates, but even that would be a great Boon, and he accordingly suggests its Adoption in the Penal Code.

He further observes, that no Power is given to Magistrates to hold to Security criminal Vagrants and suspicious Persons. In the present State of India this could not be forbidden without impairing the Usefulness of the Police.

Mr. C. J. Bird, Joint Magistrate of Tinnevely, thinks, that having no visible Means of Existence, possessing Housebreakers Tools, and sending Challenges, are not provided for; and he urges that the Disposal of Female Infants by Parents and Guardians, to be brought up as Dancing Girls, should be made penal.

Mr F. N. Maltby, Acting Sub-Collector of Canara, thinks it would be advantageous to add a Clause to Chapter IX., punishing those who, being in possession of important Documents which they are legally required to produce, before being legally called on, destroy the same. In Chapter XXIV. he instances a Case of a Child of Six Years old, which was left for a few Days by the Parents in the House of a Relation, who, without the Consent of the former, married the Child to a Relation of his own. The Parents complained, and he was punished in the Criminal Court under the Mahomedan Law. This he thinks should be provided for.

V. Streenevasiah thinks that the Breach of Engagement, once made by the Parents of a Girl, to give her in Marriage to a certain Person, should be made penal. The Engagement is performed with a Ceremony, and the Breach considered illegal in the Law.

Mr. F. N. Maltby thinks that a Clause should be added to Chapter XIII., prohibiting the Use of Measures prohibited by any "local Rule or Order" as it is frequently necessary to prevent as much as possible, the Use of different Measures, of the same nature, in the same Bazaar.

"Of Offences against Public Justice," and Note G.

Mr. James Thomas, the Criminal Judge of Rajahmundry, says, that if it be intended by Chapter X. Clause 197, that any Person "offering Interruption or Insult to a Moon-siff or Police Ameen," is liable to Fine 1,000 Rupees or Six Months Imprisonment, it is excessive."

Mr. Casamajor, Acting First Judge of Circuit in the Centre Division, thinks that 195 is a little obscure, and asks what there is to distinguish the Declaration made and subscribed from the false Evidence in 188; yet the Punishment is very different. In 197 he would leave out "or causes any Interruption," as such Power "would be a Sword in a Child's Hand in this Country," considering who the Judges are, and concludes by painting a graphic Scene of One such Interruption in an Indian Court.

Mr. Kindersley, the Magistrate of Tanjore, considers the Principle in this Chapter most admirable, and its Provisions particularly suited to this Country, "where the Crimes legislated for have grown to a fearful Extent, and hitherto with almost entire Impunity under our Administration."

Mr. Anderson, Second Judge of Circuit in the Western Division, thinks the whole Argument in Note G admirable, and the Enactments likely to produce the best Effect, especially if, as is hinted, some Punishment be awarded for false Pleading.

Mr. Lascelles, Criminal Judge of Chittoor, thinks the Enactments in this Chapter admirably well adapted to India.

Mr. John Fryer Thomas, Carnatic Commissioner for Small Claims, considers our present Law of Perjury a mere Reflection of the English Law, "not suited to India." He prefers the Code as dealing with the Crime on its own Merits; yet he does not think the Principle carried far enough on the descending Scale. He thinks it is still, however, viewed with English Eyes, though they acknowledge that direct Perjury does less Harm here; and they forget they cannot bind a Hindoo by any Oath. As the Clause at present stands, the Punishment is severe, and therefore for small Offences of the Kind (the Convictions will be limited to that) it is better to lower the Penalty, and enjoin frequent Prosecutions.

In Clause 193 he thinks the Penalty ought not to be confined to the Execution of a Decree, and should extend to any Order of a Court of Justice.

Clause 196 should be enlarged, as it is often the Case in First Suits to put the Names of Persons who have no Concern therein as Defendants, and place all their Property in Litigation. This is not provided for, where the Suit is merely for Annoyance. In Tanjore, he remarks, it is the Custom to go fictitiously to Law with a Relation, that in case of Failure or Bankruptcy the Relation may get the Estate, and so defraud the other Creditors. For this he suggests an Amendment.

Mr. E. Bannerman, Criminal Judge of Salem, wishes to see the Word "Deposition" substituted for "Evidence," throughout the Chapter, because an inattentive Reader may exclude a Prosecutor or Plaintiff's Deposition from his Ideas of Evidence.

Mr. George Bird, the Criminal Judge of Canara, thinks 196 objectionable, as it would deter many a poor ignorant Individual from bringing forward a just Claim, under Fear of Imprisonment. It might be left to the Civil Courts, to fine for a vexatious or frivolous Suit.

Mr. Blane, the Magistrate of Canara, in 203, observes that in Note A, Page 2, the Commissioners remark, "wherever we have made any Offence punishable with Transportation, we have provided that the Transportation shall be for Life."

Mr. Strange, Joint Criminal Judge of Malabar, says, "It is remarked, in Page 44 of the Notes, that the Law on the Subject of false Evidence will render unnecessary any Law for punishing the frivolous and vexatious preferring of Criminal Charges." This ought undoubtedly to be the Result of a penal Provision against Perjury; but so much is the Law now in force cramped by restrictive Rules, inessential to the determining whether the Evidence which is the Subject of the Charge be false or true, that the Degree of Proof upon which a Suitor may be punished for a false Suit, or a Complainant before the Police for a false Complaint (under Regulation IX. of 1832), would be considered wholly insufficient to lead to a Conviction of Perjury or Subornation of Perjury.

The Points which require full and careful Illustration are perhaps more connected with the Code of Procedure than with the Penal Code, but may be noticed here.

1st. What constitutes a Question material to the Result of a judicial Proceeding?

A Prisoner pleads that the Prosecution brought against him is the Result of a Conspiracy, and wishes to expose the Fact that the Witnesses are related to the Prosecutor. At his Instance the Witnesses would assuredly be questioned on the Subject of the Relationship; but if they gave false Answers it is very doubtful whether an Indictment for Perjury could be maintained against them, under the existing System, although their Depositions were calculated to defeat the Prisoner's Plea, and therefore to affect the Issue of the Trial.

I would propose that "the giving a false Statement under an Oath, or a Declaration substituted for an Oath, in relation to any Fact connected (in any way) with the Merits of any Matter undergoing judicial Investigation, with Intention to deceive," should be considered to constitute the Crime of Perjury.

2dly. What is to be considered sufficient Evidence of the Falsehood stated?

At present it is an Essential that Proof should be adduced of the true Facts, as opposed to the Falsehood sworn to, except where Two conflicting Depositions in regard to the same Fact may have been given. This Proof is rarely attainable, while Perjury is committed daily, and with increasing Effrontery. Witnesses have been known to swear to minute Circumstances relating to what was said to have occurred more than Forty Years before they gave their Statements, and when they were Children. Though every Person who may hear such Evidence be satisfied of its Falsehood, the Witnesses must escape Punishment, from the Want of the Means of establishing the real Truth.

Clauses 193 and 194. The Offences herein specified should, I think, be rendered liable to different Degrees of Punishment. The raising a false Claim to Property involves more determined Vice than the removing it from the Power of a Court. It necessitates the Production of false Evidence; it more effectually deprives the Creditor of the Uses of the Property, and is easier and more frequent of Commission.

Clauses 196 and 199. The raising a false Suit appears to me to be a far more serious Offence than that of attempting to deter a Person by Threat from having recourse to a Court of Justice. It is committed with more Deliberation; it must be supported by false Evidence; it occurs more frequently; it is more likely to effect the End which is in view, and, if successful, to entail a greater Injury on the Person against whom it is directed. I would therefore assign the higher Punishment to this Offence.

Mr. Anstruther, the Joint Criminal Judge of Coimbatore, remarks, in Clause 190, Illustration A, if A should prove falsely an Alibi, the Prosecutor would probably be liable to a Charge of Perjury; and in 193, at present a Person may dispose of his Property as he best can. The Courts can prevent it, but not punish it. A Person unjustly sued may well sell his Property. He observes, also, that escape pending Inquiry is not provided for.

Mr. Pycroft, Joint Magistrate of South Arcot, thinks that no Provision is made by 200 and the following Clause for the Escape of a Person from the Custody of the Magistrate, during a Criminal Investigation, or on his different Journeys from Court to Court. A Magistrate trying a committable Case is not a Court of Justice.

Mr. C. J. Bird, Joint Magistrate of Tinnevely, remarks, that in his District the Offences against public Justice prevail more than in any equally large District in India. Constant Charges of Highway Robbery, utterly false, are brought up, and false Evidence is given even where Cases are true. In this there is almost perfect Impunity, for the Witnesses are protected from Prosecution, and the Prosecutor generally contrives to escape Punishment.

He remarks, that unless Police Officers can bind Persons by Oath, or by something tantamount, lying Witnesses will enjoy the same Impunity they have hitherto done, and Prosecutors will be liberated from the present feeble Check of Regulation IX. of 1832.

Mr. Silver, the Officiating Joint Criminal Judge of Tinnevely, confirms Mr. C. J. Bird's Statement as to the Prevalence of false Complaints, and the Fewness of the Convictions, in his District, and shows that Perjurers before Police Officers will escape unpunished. He disapproves of extending the Privilege of examining on Oath to them, and thinks that Oaths should be sparingly used in other Cases, Perjury being difficult to bring home to an Offender. Punishment for bringing false Complaint might be awarded; and this, followed by a Law against false Pleading, would be very beneficial. He disapproves of the Abolition of Tasheer.

Mr. Sharkey, the Principal Sudder Ameen at Honore, proposes to estimate the Crimes in this Chapter by the Effects, and would exclude them from the Forms of a Criminal Trial, and punish them summarily by Fine and Imprisonment. This would be much better than the present Procedure, which by its Form and Penalties causes the Crime to prevail. He, although, thinks that non-essential Prevarication and Contradictions should be provided for. The Punishment in 190 seems only to apply to Civil Cases, and would punish it in proportion to the Interests involved.

CHAPTER XI.

"Of Offences relating to the Revenue," and Note H.

Mr. Edward Bannerman, Criminal Judge of Salem, says, with regard to Clause 208 it seems doubtful what constitutes an Attempt to smuggle. In some Countries a false Manifest or Statement of Goods is considered such, and in some it is not. Perhaps the Words "by Word or Deed" might be inserted after "Attempt."

Mr. George Bird, the Criminal Judge of Canara, thinks 211 would require Illustrations, as being unintelligible.

Mr. Anstruther, Joint Criminal Judge of Coimbatore, thinks 213 very wide, and 217 too severe. "The Punishment now found to be sufficient is, under Section XXI. Regulation 1 of 1812, by Circular Order, Foujdaree Udalut, 8th May 1815."

Mr. Edward Maltby, Joint Magistrate of Canara, approves of the Enactments in this Chapter, with this Exception, that they do not provide a Power of Confiscation. 229 enacts that that Penalty shall not be repealed where it exists in Law. But on the Code becoming Law will the Regulations be considered in force?

The Arguments in the Notes seem merely to bear upon the Confiscation of other Goods, and the Conveyances, which Penalty is the only sure one to punish the Owners, who are generally not the Persons who convey the Goods in question.

Mr. Pycroft, the Joint Magistrate of South Arcot, thinks that simple Imprisonment inflicted on the Offenders in 212 or 213 would in most Cases be no Punishment at all, and suggests Imprisonment of either Description.

Mr. F. N. Maltby, Acting Joint Magistrate of Canara, says, that after specifying the Punishment for Smuggling the Code does not say whether in the event of another Crime being committed in the Act (a Thing of frequent Occurrence) the Punishment is to be cumulative. 216 punishes the Omission of a Mark, but there is no Provision for removing a Mark placed by the Order of Government.

Mr. Pelly, Joint Magistrate of Bellary, thinks that a Person putting a rough Mark of Charcoal on Cloth is to (by 217) be severely punished by not less than One Year's Imprisonment. This is very common. The Foudaree Udalt deemed Three Months sufficient, and Clause 222 might embrace it. In 217, Stamp implies the Instrument, but is not used universally so throughout the Chapter.

Mr. A. Freese, Magistrate of Chingleput, thinks the affixing a minimum Punishment to these Offences is bad, as mitigating Circumstances may occur. He cites Clause 217, in example of where the Punishment is much too severe in Cases similar to those mentioned by Mr. Pelly.

V. Streenevasiah thinks the Enactment too severe, and more heavy than that assigned for counterfeiting Coin, and thinks Six or Twelve Months would be sufficient for counterfeiting a Stamp, or using one knowing it to be counterfeited.

Mr. Casamajor, Acting First Judge of Circuit in the Centre Division, thinks that much in the Chapter requires Explanations and Correction. 1. That the Penalties are severer than the Regulations, Confiscation being at present the only Penalty, as in England. He disapproves of Imprisonment, as it is likely to tell harder upon the Smugglers, who are generally Traders, by interrupting their Course of Business, than the Law intends.

In 213, he asks, How can the Purpose for which Articles are used be known? This would be a Cause of great Vexation and Injustice.

215. In this he would insert after Prosecution the Words "without satisfactory Cause shown," as People may have the prohibited Articles without intending Fraud or illegal Acts.

216. He thinks "Time must be allowed to obey," and thinks it proper to insert "for Twenty-four Hours, or, before the Article quits his Possession, or before Twenty-four Hours." This he illustrates. 218-219. He would omit the Words "intending or knowing it to be likely that the same may be used," and substitute the Words "which can be used solely."

221. The Remark in 215 applies to this also.

CHAPTER XII.

"Of Offences relating to Coin," and Note I.

Mr. George Bird, the Criminal Judge of Canara, thinks that "in the Chapter relating to Coin there appears to be too great a Difference made betwixt uttering and coining King's and Company's Coins and other Coins, but as Bahaddey, Ikary Pagodas, &c., which are still current in many Parts of this Presidency," &c. He supposes Clause 241 places "the Coiner and the Utterer of false Coin on the same Footing. The former is deserving of a more severe Punishment than the latter." In 244 and 252 he proposes that "knowing it to be likely" should be omitted, and "the Person who actually passes false Coin, and he who intends only so to do, ought not to be liable to the same Punishment."

Mr. Anstruther, the Criminal Judge of Coimbatore, thinks that Note I "might direct Attention to the forging of the old Arcot Rupees."

Mr. Casamajor, Acting First Judge of Circuit in the Centre Division, thinks the Arrangement and wording of this Chapter unnatural, and liable to mislead, especially in 232 and 233, where the Crime is first provided for generally, and then for King's or Company's Coin, and proposes "to amalgamate the Two Enactments in One, as also 234 and 235, 238 and 239, 240 and 241, 243 and 244, 246 and 247, and 251 and 252." He thinks the Distinction between King's and Company's Coin and other Coin should be extended to 236 and 248. He concludes by proposing an altered Form of 243 and 244, and thinks that Provision should be made requiring all public Officers to receive bad Coin, and give a Receipt for the same.

CHAPTER XIII.

"Of Offences relating to Weights and Measures."

Mr. George Bird, the Criminal Judge of Canara, remarks that in Clauses 254 and 255 "the Act itself, and the possessing with the Intention (of fraudulently using), are made liable to the same Degree of Punishment."

Mr. Blane, the Magistrate of Cuddapah, thinks that the Provisions ought not to apply to Scales, but merely to Weights and Measures, as Indian Scales are generally of the rudest Construction, seldom correct, and the Incorrectness is always visible to the Person who is purchasing the Commodity. No doubt the Intent of Fraud is specified, yet it appears doubtful how that Intention is to be ascertained. It is observed that Balances are not named in Clause 254.

Mr. Pelly, the Joint Magistrate of Bellary, thinks that by Clause 253 "a Person is liable to Punishment who fraudulently uses any Balance which he knows to be false. But no Punishment is assigned for fraudulently using any true Balance. In Indian Country Towns and Villages there are perhaps but few correct Balances. The Buyer and Seller are both aware of their being false, and will be generally careful to see the proper Correction made in them before the Goods are weighed. But in large Towns, such as the Presidencies, where the Balances are kept correct, a fraudulent Use of them is easier, but would escape Punishment."

CHAPTER XIV.

"Of Offences affecting the Public Health, Safety, and Convenience."

Mr. George Bird, the Criminal Judge of Canara, considers the Penalties prescribed in Clauses 265, 275, excessive.

Mr. Anstruther, Acting Joint Criminal Judge of Coimbatore, thinks Clauses 265, 274 might be condensed, and 266 too mild. On Clause 267 he says, that "whoever conveys a Person in a Vessel, and endangers that Person's Life, is punishable, but the Lives of all who may sink being endangered, the Boatman is guilty by the Act of the Offence of 266, yet by Clause 58 is not punished cumulatively." "272 provides for what should be and must be done by the public Authorities."

Mr. S. Scott, Joint Magistrate of Tanjore, does not think the Penalty in 257 sufficient; and remarks that the Consequences of the Act are so fearful that Seven Years Imprisonment would not be too severe, if committed intentionally or malignantly.

Mr. Pycroft, the Joint Magistrate of Cuddalore, thinks that the Punishment in 263 "seems far too little for an Offence that may be followed with such serious Consequences."

Mr. Pelly, the Joint Magistrate of Bellary, in Clause 269 remarks, that the Punishment for this Offence is severe, but it will be rendered void by the Belief of the Offender being in his Favour. The Natives are "particularly careless about Fire, but like most other People they never believe an Accident will occur till it does occur: it has been safe enough hitherto, and why not now." He asks, in Clause 270, "Would a Gentleman who leaves his Gun loaded in his Room be subject to this Punishment?"

Mr. James Thomas, the Criminal Judge of Rajahmundry, thinks that the Punishment in Clauses 264, 265, and 272 "appears to be too high, and liable to the greatest Abuse."

CHAPTER XV.

"Of Offences relating to Religion and Caste," and Note I.

Mr. James Thomas, the Criminal Judge of Rajahmundry, considers the Punishment specified in Clause 282 "excessive, liable to the greatest Abuse, and tantamount nearly, if not quite, to the Suppression of all free and legitimate Discussion." He further considers that the Term "wounding the religious Feelings" is very vague and uncertain, and considers the Punishment of uttering Sounds and making Gestures "as peculiar to the Code." (See his Report, Par. 23.)

Mr. Malcolm Lewin, Acting First Judge of Circuit in the Centre Division, considers that "Clause 280 tends to confirm the ignorant in Principles of Belief which operate to their Prejudice. The Power to injure is believed to exist, because its pretended Application is met by heavy Punishments. People will not believe that the Government have denounced under heavy Penalties the Exercise of a Power which is only imaginary." He further states, "where this has been legislated for the Belief has extended," and suggests that "Dhurna might be treated as a petty Assault, and is not incompatible with the Definition (Clause 339), if he cause Cessation of Motion, or it might be met by Clause 330 as an Attempt at wrongful Restraint, and treated as a petty Offence." So the Threat in 283, Note C., he would view with reference to its Object, as Criminal Intimidation, Attempt at Extortion, or Abetment, and punish it accordingly. Another serious Objection to this Clause, in Mr. Lewin's Opinion, is "the Spirit of Litigation it infuses into Society," "the Delusion it conveys with it," and "its Tendency to render that important which but for Penalties would be ridiculous." All these Acts, as they lead to a Breach of public Tranquillity, might be made subject to the Rules which provide for the Repression of that Offence. They furnish Evidence of Intention, but ought not to constitute a distinct Offence.

Mr. John Fryer Thomas, Commissioner for Small Claims withdrawn from the Carnatic Fund, considers that this Chapter is One of "the most strongly marked" Instances of the Over-legislation of the Code. He considers it "a dangerous Novelty, liable to extensive Abuse, that a Man should be subject to a Criminal Prosecution for every Gesture or Sound that he may utter offensive to the religious Feelings or Prejudices of another. There can be no Limit to Criminal Prosecution, or to the Variety of Sentences under Clause 282;" "and if Criminal Courts are to be open to the Zealots of differing Sects on every trifling Occasion, the Result will be to foster Bigotry, and keep the religious Animosities of Sects at its Height, as well as interfere with individual Security and Peace." Mr. Thomas instances the Case which came under his personal Observation, of a Votary of Seeva who used daily "to pour Abuse upon Vishnoo;" and states that his Experience of the various Sects in India, and their ready Recourse to Law Courts, "leads him strongly to deprecate this Provision." He thinks, further, that the Commissioners

sioners have overlooked at Times the permanent Interests of Society, making that criminal which is, in its general Tendency and Result, highly beneficial to Society; and gives, as an Example, Clause 284. The Institution of Caste, being in itself an Evil, "ought not to be buttressed up by penal Enactments;" and as Society has not hitherto suffered from the Want of a penal Provision, it should be left, like Slaveholding and other special Rights or Privileges, for the Possessor of it to apply to the Civil Courts for the Maintenance thereof. He further asks, "Who is to define what constitutes the Loss of Caste? The Sastras have fallen into Disuse, and no uniform System prevails through India." Lastly, he inquires whether the Pariahs of different Degrees would obtain the Benefit of this Caste Law.

Mr. Strange remarks, in Clause 278, "that it is the Custom of Missionaries to preach at Native Feasts, where they are often pelted, &c. This is a Disturbance, but the guilty Party appear to me to be those who, in obedience to their evil Passions, attack one who, in furtherance of the Law of God, is endeavouring to lead them to the Acceptance of the greatest Gift which can be offered to Mankind. I doubt whether it is intended that the Missionary should be punished as having caused such a Disturbance. The Introduction of the Word 'voluntary' would imply not; but the Matter should not be left in Doubt." (See Para. 34.)

Mr. Anstruther, the Joint Criminal Judge of Coimbatore, says, in Note J., "If the Conduct of Government has been characterized by eminent Judgment and Success, new Rules will do more Harm than Good."

Mr. E. Maltby, the Joint Magistrate of Canara, considers "the Punishment provided in Clause 275 insufficient, as the Defilement of Mosques and Temples in this Country is always perpetrated with a view of originating popular Disorders, in which Loss of Life almost invariably occurs;" and he "considers the Person who wantonly commits such an Offence deserves Death equally with any Murderer." With respect to the other Enactment of this Chapter, he says, "It appears, however, to me doubtful whether the Law will not be likely to aggravate the Evil against which it is intended to guard, by giving rise to frivolous Prosecutions, and drawing Men's Attention to the Subject." He concludes by remarking that Experience has shown that the present Law, added to the great Forbearance of the different Sects in India, has secured the unmolested Exercise of Religion, and that therefore such Clauses as 276, 278, and 283 are unnecessary.

Mr. Frere, the Acting Joint Magistrate of Coimbatore, considers that this Chapter has an objectionable Tendency in the present State of Society in India; and inasmuch as the Existence of Caste is in itself an Evil, a Government ought to discourage it as much as possible, and take cognizance of those Acts only which may lead to a Breach of the Peace. "The Provisions of Chapter XV., however, are by no means confined to these Cases, and it is much to be feared that if carried into effect they may give rise continually to frivolous and vexatious Complaints, which it will be difficult to obviate in a Country so abounding with minute Distinction of Sects and Observances as that of India, when the Magistrate shall be by Law prohibited from refusing to take cognizance of them. He trusts that in Time Caste may disappear; and to make punishable Acts done in contravention thereto is to make public Officers the Conservators of a bad System, and greatly to impede the desirable Object of their gradual Abolition."

Mr. Rhode, the Acting Joint Criminal Judge at Masulipatani, considers "Clauses 285 and 286 as descending too much into Minute and Distinction of Offences which may be classed generally as petty Offences, and particularized under this One Head."

Mr. F. N. Maltby, the Acting Sub-Collector of Canara, offers a verbal Criticism on the Term "Divine Displeasure," in Clause 283, that if adopted "it would be better to add 'the Object of the Displeasure of Divinity or of any supposed supernatural Being,' as in many Parts of India it is most usual to invoke the Enmity of inferior Evil Spirits. In such Cases the wording of the Clause would leave Room for Cavil."

Mr. Pelly, the Acting Joint Magistrate of Bellary, observes, that "the making a Law on this Head seems to be very objectionable. The special legislating on the Subject is likely to create the Offences enacted in the Code." The Prejudices of Caste are supposed to be gradually wearing down, and special Enactments regarding them will only tend to check the desirable End, that they should be wholly abandoned. Clause 283 would subject certain Creeds to Punishment for exercising the Discipline of their Churches in certain Cases. "The First Part of 284 might be classed under the Provisions of Clause 288; and the other Part, inducing a Person to do ignorantly, &c., should be extended to all wanton Attacks on the Feelings or Character, so that a Christian, who is of no Caste, may be equally protected in such Cases." He instances a Member of the Temperance Society being insidiously made to drink ardent Spirits; or an European having Cows Urine mixed with his Food. Finally, he imagines, "that the Provisions might be merged in other Chapters of the Code; but if retained, that Caste, and what constitutes the Loss thereof, should be clearly defined."

Mr. Sharkey, the Principal Sudder Ameen of Honore, remarks, upon Clause 282, "The Clause, I think, ought to be qualified, with the Explanation in the last but One Paragraph of the Note J."

CHAPTER XVI.

"Of illegal Entrance into and Residence in the Territories of the East India Company," and Note K.

Mr. James Thomas, the Criminal Judge of Rajahmundry, says, that "Clause 287 provides for the Punishment by Fine of 1,000 Rupees for a Person arriving in any Part of India failing to make known, whether through Ignorance or other Impediment it is not stated, his Name and Object of Pursuit, &c. This appears preposterous in the present State of India, and the Laws which have lately passed the British Legislature."

Mr. Boileau, Third Judge of Circuit in the Western Division, considers this Chapter "a downright Prevention to the Resort of our Countrymen to India, and a direct Violation of and indirect Defeat of the Charter Act."

Mr. Blane, the Magistrate of the Zillah of Cuddapah, proposes, in Clause, 287, to insert the Word "intentionally" after the Words "within the said Territories;" and remarks, that the unintentional Omission to make known his Name, &c. in Writing ought not to subject a Person to Punishment. On 290, he says, that it is not clear what will constitute the Offence of again residing in the Company's Territories without Licence. "If the Person be fined or imprisoned for residing without Licence, and omits afterwards to quit them, has he committed the Offence again? If so, the Time allowed for Departure should be defined, or a Power of Deportation given to the public Authority."

Mr. Pelly, the Joint Magistrate of Bellary, suggests that a Time should be limited for the Person to enter his Name in Writing.

CHAPTER XVII.

"Of Offences relating to the Press," and Note L.

No Opinions have been received upon this Chapter from any of the Officers called upon.

CHAPTER XVIII.

"Of Offences affecting the Human Body," and Note M.

In the Opinion of Mr. James Thomas, the Criminal Judge of Rajahmundry, the Term "voluntary culpable Homicide" does not appear happily chosen; and the Distinction entered into by the Commissioners between what they term Manslaughter Homicide by Defence, voluntary culpable Homicide Murder, and voluntary culpable Homicide by Consent, are not sufficiently obvious, and calculated to mislead. In one Case he understands that a Person legally bound to supply Food to the Mother of a sucking Child, though he did not know that Child to be in existence, omitting to do so, would be guilty of voluntary culpable Homicide, and, in other Words, of Murder. He thinks the Law of England would treat the Offender in Illustration A, Clause 299, very differently from the Commissioners.

He thinks 305, 308, and 309 not clear enough; and by Illustration C a Person shooting a Thief running off with his Property is liable to Three Years Imprisonment. He considers the Punishment for procuring Abortion quite inadequate, and that in 326 "very excessive, and irrespective of the Intention of the Wrongdoer, the real Guilt that attaches to him." This also applies to 325, 327, and 332. The Punishment for wrongfully confining a Person for One Day seems excessive. Rape and Attempt to commit it are not sufficiently heavily visited; "and in this the Enactment is inconsistent with the other Parts of the Code, which provides heavier Punishment for Offences of a much more venial Description. 351 provides Punishment for assaulting One who is guilty to him of grave and sudden Provocation." The Provision for the Offence termed "Show of Assault" is, he imagines, peculiar to the Code.

Mr. Anderson, Second Judge of Circuit in the Western Division, quite agrees in all that is said as to the Propriety of extending some Indulgence to Homicide which is the Effect of Anger excited by gross Insult by Word or Gesture. He thinks "the Line drawn between those bodily Hurts which are serious or grievous and those which are slight will be found useful in Practice, and that the Punishment proposed for grievous bodily Hurt, when inflicted by way of Torture, or by means of any sharp Instrument, or Fire, &c., are very proper."

Mr. Malcolm Lewin, the Second Judge of Circuit in the Centre Division, thinks that it may be objected that the Code in its Attempt to classify refines too much, and also creates needless Offences (340, 341, 352). The English Law of Assault seems better adapted to a Country in which petty Disputes are frequent, a most trifling Altercation being generally accompanied by a Show of Assault.

It strikes Mr. Boileau, the Third Judge of Circuit in the Western Division, that the Definition attempted to be explained between Murder and voluntary culpable Homicide is much too nice to be understood and acted on; as also between instigating and abetting false Statements, and false Evidence. He thinks the Enactment in 361; 362 not in accordance with English Law, and thinks that in causing Abortion the Woman should be described as being *quick* with Child.

Mr.

Mr. J. F. Thomas, Commissioner of Carnatic Claims, thinks it would be well to distinguish Cases of voluntary culpable Homicide, where there is comparatively little Blame, from those that come within a Shade of Murder, and thinks the Latitude of Punishment inexpedient. 306. The Inducement to commit this Offence is so slight that the Punishment seems too great; and this applies also to 307. Five Years Imprisonment and Fine will be enough; but if to do an Act denotes the Omission, as in Clause 24, this will require much Modification.

312. On the Subject of Abortion, he thinks the Commissioners have confounded Two Offences, and compares the Case of a high Caste Widow who, to hide her Shame, causes herself to miscarry, and that of the Seducer, who, to cover his Crime, would cause such Woman to miscarry. After proposing certain Punishments for these Cases, he says little will be done till "the Remedy is applied to the Root of the Evil, the barbarous Usage of the Country in not permitting Widows to marry. The Law as proposed by the Commissioners is likely to cause false and vexatious Charges."

315. He thinks that to Emasculation should be added Injury to the Membra Privita, as that is a common Crime in this Country. "The Seventh Definition of Hurt does not bring the Case where all the Teeth are forced out." 341. As every Bazaar Fracas is attended with Show of Assault and abundant Gestures, this Act is inexpedient, and unless a Person be of such Rank as to be degraded thereby had better not be made penal. The same applies to 351, to Assault itself; and unless the Person can show some Hurt he should not be allowed to drag the Offender before the Criminal Court. He thinks that the Enactment in 359 should be extended to those Slave Girls and other Women who are not married, but cohabit with One Man, and whose Children are acknowledged by the Father. 359. The Exception in this Case should be limited to "provided she has arrived at Maturity." He instances a Case of Force by a Husband to his Wife, a Child at Masulipatam. 360. He thinks that this should be put on the same Footing of Principle as 361, and objects to the large Range of Discretion in the former Case.

Mr. E. Bannerman, Criminal Judge of Salem, thinks that 332 is not adequate in such Cases, as detaining a Doctor or a Tappal Runner, which might induce dangerous Results.

Clause 333, where the Punishment is absolutely limited, is followed by it, 324, where it is extended. He submits generally that a Law or its Limitation should not be *absolutely* expressed when a contradictory Exception is to follow. This applies to many Cases. He objects to the Classification of the Offences in 346 *et seq.*; and in Clause 390 he proposes to insert "or suspecting" after "knowing."

Mr. Blane, the Magistrate of Cuddapah, considers all the Law in 299, 303, and 309 "out of all Proportion severe," and unsuited to the Exigencies of this Country, especially as the Commissioners have in view the Prevention of the Patience with which the Natives submit to the "Depredations of Robbers, and the Policy of encouraging a manly Spirit among them." The Natives never could understand the Subtleties of this Part of the Code, and the First Case of Punishment of this Kind would have a very disheartening Effect.

315. He sees no Use of making a separate Head of Emasculation, and objects to the Delicacy observed by the Commissioners in treating of the Crimes under 361 and 362.

Mr. Anstruther, Joint Criminal Judge of Coimbatore, thinks that 321 and 322 would exclude forcing Robbers to restore Property stolen, and 357 will not answer, as the Parent and Kidnapper may collude to sell a Child to save it from starving, and thus do a good Act.

Mr. Scott, the Joint Magistrate of Tanjore, "thinks Clauses 341 and 352 might be omitted, having a great Tendency to increase frivolous and trifling Complaints."

Mr. H. Freer, Acting Joint Magistrate of Coimbatore, thinks the Proposal of making the Time of Incapacity from Work the Test whether a Hurt is grievous or not very inapplicable to India, where artificial Means are constantly resorted to to disguise the real State of the Case, and where Medical Assistance, to find out the Truth, is frequently not procurable.

Mr. F. N. Maltby, the Acting Sub-Collector of Canara, on the Subject of the Difference of the Code from the English Law on this Chapter, thinks that the Rigour of the latter is necessary, that "it is a Case in which much must be left to those who administer the Law," and that "it is not difficult to imagine Cases in which its rigorous Exercise would appear harsh or even absurd, as in those suggested by the Commissioners, but it appears that there are also many in which the Rule would fail to satisfy Justice." He instances a Man breaking into a House, and killing the Inmate by accidentally letting Part of the Roof fall upon him.

Mr. Pelly, Joint Magistrate of Bellary, thinks that by the Definition of voluntary culpable Homicide all Persons engaged in a Sutte are guilty of Murder, and asks if this is contemplated, and whether those Provisions include Self-destruction and Self hurt.

Mr. Sharkey, the Principal Sudder Ameen at Honore, divides punishable Homicide into Two Branches: Murder, and Homicide committed under sudden Impulse, both of which the Code embraces. He thinks Illustrations B, C, D, E, and G cannot be recorded, without Qualification, as Acts of premeditated Murder, as Death may not be the positive natural Consequence of the Act, and the fatal Results have a Chance of not being produced; therefore a Qualification should be made to specify these, as Murder; 1st, that there was a deliberate Intention, and, second, that the Act referred to was the sole Cause.

This he illustrates by Examples. He imagines that 298, Illustration C, ought not to be treated as Murder, as the Report is not sufficient Cause to make him commit Suicide. He does not think the Definition in 299 sufficiently clear.

He approves of the Punishment in 300, 301, 302, 303, and 304, but thinks a Distinction of Penalty should be made in the different Degrees of Principals; and in Clause 305 he objects to the same Punishment being awarded in case of Homicide committed through Negligence in the Perpetration of some other Crime and for similar Homicide without the Attempt, and thinks "that it appears inconsistent that, while the actual Perpetration of a Crime is visited with no more than the Punishment annexed to it, the mere Attempt should be punished with a severe Penalty." He then shows the Analogy and the Difference between a Homicide committed by Accident in a lawful Act and in committing another Crime, and makes it turn upon the Intention and the Difference between "a perfectly harmless Spirit" and the Disposition to actual Mischief that is supposed to characterize the respective Acts. On the whole, he comes to the Conclusion "that an increased Punishment should be prescribed for Offences in the Commission of which Death may be caused; though not voluntarily or by Rashness or Negligence, yet such was the Result, and which consequently was not impossible to happen, and which ought to have been calculated upon by the Offender, who therefore ought to be held responsible for the same."

In the causing Miscarriage he thinks it should be specified that the Female was quick with Child, but thinks the Measure of Punishment in 312 by no means sufficient, as it is very often little short of Murder, and that the Arguments in the Notes for it are very unsatisfactory.

On Hurt, he thinks the Terms "Twenty Days" and "Joint" are likely to cause arbitrary Sentences, and thinks that the real Extent and Nature of the Wound is a better Criterion.

Mr. Sharkey asks, in 336, whether the additional Imprisonment implies the Three Years Imprisonment, and the Ratio of Three Days for every Day of wrongful Imprisonment, or merely the latter. He thinks the Definition of Assault exceptionable, as being too quaint.

CHAPTER XIX.

"Of Offences against Property," and Note N.

Mr. James Thomas, the Criminal Judge of Rajahmundry, remarks, in Clause 398, on "the Difficulty, not to say Impossibility, of a judicial Tribunal having Proof of what the accused Person contemplated as likely." He considers Clause 402 as excessive, and thinks the Punishment of Mischief accompanied by a Preparation to cause Death inadequate, "and" inconsistent with the other Parts of the Code. He cannot perceive the Superiority of the Terms used in 422, 439 over the usual Term of Burglary, as the Distinctions therein are highly artificial, and thinks the Enactment in 435 quite insufficient for so heinous an Offence. On Page 84 of the Notes, where the Commissioners propose to punish as a Cheat every Man who obtains a Loan by making a Promise of Repayment which he does not mean to keep, he asks, How is this Intention to be judged of?

Mr. Anderson, the 2d Judge of Circuit in the Western Division, thinks the Punishment for Theft in 364 very inadequate, and suggests Seven Years instead, to be regulated by the Amount of the Property stolen.

Mr. Boileau, the 3d Judge of Circuit in the Western Division, thinks that the Construction given of the overt Act, so as to constitute Theft, in Chapter XIX., is no Law. It should be not merely *moving*, but the Removal of anything against the Owner's Consent, and with a *felonious Intent*, which amounts to Simple Larceny.

Mr. John Fryer Thomas, the Commissioner for Carnatic Claims, thinks that in Clause 365 there should be a Distinction made between the well-built House secured and locked and the unprotected Mud Hut. In such Places where the Property has been left unguarded, tempting to the Commission of the Crime, One Month's Imprisonment would be enough. He therefore proposes to use the Term "properly secured," and illustrates accordingly. He thinks the Penalty in 371 disproportioned, being equal to Rape, and thinks that a Deduction on the Punishment would induce Individuals to stop short of actual Injury.

Mr. Thomas thinks (Clause 379) it an Omission not making a Distinction between the Leaders of Dacoits and the low Tools hired to swell the Gang, as is usually the Case. In these latter he proposes Six Months Imprisonment, Security from the Head of the Village, and a sound Flogging, as otherwise they only burden Government, and don't tend to diminish the bad Practice. He proposes Transportation, Imprisonment for Life, or Fourteen Years, for the Leaders, those armed, and those who use Violence. Besides this Distinction of Persons, he proposes a Distinction in the Nature of the Dacoity. A Dacoity committed in Tanjore merely with Sticks should be differently legislated for from those where they come well armed to resist the Police. He would also exclude the Robbers of Grain in Times of Scarcity, classing that under "Theft," as well as when in such Cases Grain is not the only Thing taken.

He does not think the Provisions of Clauses 389 and 390 sufficient, where the Receiver is habitually so, or the Servant of the Person robbed, or the Keeper of a Spirit Shop or House

House or Tent, and thinks that the Aggravation specified in Clause 395 should apply to the Remover of stolen Property, when Watchmen and Guards.

He thinks 406 excludes the poisoning a Calf or Two Goats, when the Value is small. It cannot come under 406 nor 399, and hence it seems that it is not provided for. 412 and 414. He complains again of no Distinction in the Kinds of Houses, and thinks that the Distinction in Ships, in 415 should be extended to Houses.

He thinks that the Laws of Housebreaking are defective in not making higher Penalties, where Servants, Watchmen, and trusted Persons are implicated.

Mr. E. Bannerman, the Criminal Judge of Salem, proposes, in Clause 390, to insert "or suspecting" after "knowing."

In regard to Clauses 460, 461, and 462, he thinks that "the Maximum of Punishment is too low, considering how difficult it may be to prove and recover from the Delinquent all the Property taken. A party once dispossessed of his Property on the Pretext of a legal Claim on it is thus often in a more helpless and worse Condition than a Person who has suffered Gang Robbery. Furthermore, a Party who has committed Gang Robbery may escape the Penalties of that Offence by pretending some not quite impossible Claim on his Victim, which will bring himself under the milder Sentence contemplated in the Clauses."

"At present, even when a Debt is not pretended, a Party sometimes forcibly carries off valuable Property under the Cover of a direct Claim (as an Inheritor or otherwise) thereto, and the Claim of the dispossessed Party is by false Evidence or otherwise so represented that all he gets from the Police is a Reference to the Civil Court, where he gets but little Redress, not having Evidence to each Article of Property taken by the Claimant who robbed him, or her, for it is generally on Females that this Description of Robbery is committed."

"Such Cases form a great Portion of the Wrong which now goes unredressed, and I could have wished to see some more effectual Provision in the new Code for the Prevention of it."

Mr. George Bird, the Criminal Judge of Canara, thinks the Distinctions in 363 perfectly unintelligible to the Natives; that the placing a Person who cheats One Rupee and a Lac on the same "Level," as in 364, is objectionable. 377, 379. Here he thinks the minimum Punishment too small, and the Discretion allowed here, and in 413, too great. 382, he says, tearing the Ear off, grievous Hurt, and the cumulative Punishment for that and for the Robbery, would equal Imprisonment for Life, which would be too much. On 393 he says, if a Person cheats he should be punished without reference to the Way, and therefore this is superfluous. 394, he says, is insufficient, and on 400 asks, "Suppose the Fine cannot be levied?"

"408 goes too far, and would rather become a dead Letter, or very vexatious in this Country."

Mr. Blane, the Magistrate of Cuddapah, thinks that the Distinction between "any Injury," in 368 and 369, and "grievous Hurt," in 370, 371, not sufficiently defined, nor likely to warrant the great Disproportion of Punishment.

373 and 374. He thinks that what is provided against the false Accusation of the Crime mentioned should be extended to that of other Crimes, though not to be punished so severely.

In the Definition of Clause 376 Mr. Blane suggests the Use of the Word *Gang Robbery* instead of *Dacoity*, as more general, and better understood in this Presidency.

Under 386 he proposes to include under this Clause "the malicious Intention of causing Loss, as well as the fraudulent Intent to cause Loss,"—as where a Servant, to injure his Master, suffers his Property to be spoilt, although he gains nothing thereby.

Mr. Strange, the Joint Criminal Judge of Malabar, thinks in 363 that the Property, the removing of which under particular Circumstances constitutes Theft, should be defined to be such as the Remover had no Right or Title to possess himself of at the Time he removed it. In Illustration C, A attempted Fraud, but not Theft. He would also define the Removal to be "such as is made with a view of fraudulently appropriating or disposing of the Property removed." Illustration O, in Mr Strange's Opinion, is an Attempt to get Money by false Pretence, and is Fraud. On Clauses 365, 438, 436, and 437, he says that whatever is gained in critical Accuracy of Arrangement, in Practice is risked "by attempting to legislate separately for what in effect are integral Crimes. To punish a common Act of Night Burglary, besides making reference to Definitions, recourse must be had to these Four different Clauses, Three of which are far removed from the Fact, and an Account must be summed up before it can be ascertained to what Punishment the Burglar may be sentenced."

Mr. Anstruther, the Joint Criminal Judge of Coimbatore, thinks Illustration M hardly Theft, and in Illustration Z. says many a Person would take the Property as Security for his own Due, and then honestly prosecute to justify the taking, meaning to restore what he had taken should he fail in his Suit.

On 865 he says, "Theft from a Tent or Vessel used for Custody of Property is excluded."

392. He says, "The Intention may be honest to the Employers and fraudulent to the Dupe. Thus the Village Toties and Taliaries, who frighten Thieves into Restitution by (263.)

"deceiving them, would be hindered in their Operation." The Limitation in Clauses 412 and 414 he considers arbitrary, and those in 437 perplexing.

Mr. Pycroft considers the Punishment in 410 scarcely severe enough for an Act which may involve the Loss of a Vessel and all on board of her.

Mr. Pelly, the Acting Joint Magistrate of Bellary, remarks, on Clauses 364 and 369, "Why should the Punishment for Theft be confined to *rigorous* Imprisonment, while the Offence of Extortion is punishable with Imprisonment of *either Description*?"

Clause 392.

"A few Illustrations of cheating in Horse and other Cattle Dealing would be a useful Addition to the Illustrations already given in this Clause."

Clause 412.

"The Punishment for Stack-burning, the Value of the Stack being below 100 Rupees, would only be Six Months Imprisonment, or Fine, or both, (see Clause 402,) which Punishment seems too lenient for so malicious an Offence, so easily perpetrated without Detection."

Mr. Sharkey thinks that the Punishment for Theft should be regulated by the Value or Amount of the Property stolen, as a Man may steal so much as to overbalance the Fear of the Three Years Imprisonment, by stealing enough to make his Fortune. The present System puts the Thief of Lacs, and the Thief of a few Rupees from Want, on the same Footing. The same Principle applies to 369, 384, and 385, 387, 390, 394, 395, 396. On the Subject of Extortion, Mr. Sharkey thinks that the Party having no other Alternative but to pay or suffer should be made an eventual Ingredient in the Definition.

374 is in his Opinion excessive.

In 383 he thinks the Expression "fraudulently takes" applies to the Exception as well as the Rule. He thinks this Law should be qualified to the Effect that the Appropriation should not be legal without previous Notice of the Fact to a legal Authority, and due Publicity given. He exposes the Fallaciousness of the Reasoning in Paragraphs 23 and 24, Note N.

He thinks that the Law of Cheating, like Extortion, should be qualified by excluding such Acts, which, though fraudulently intended, may be fairly guarded against by common Prudence.

He suggests that the Definition of Mischief should not be confined to Property, and thinks the Punishment not adequate, proposing the Rule, that the Punishment should vary as the Value of the Property stolen.

404 He thinks the Punishments in 404 and 406 not consistent with each other.

He thinks the Commissioners wrong in making the same Punishment for the Attempt and the actual Perpetration of the Offence, in 406-416, and doubts much the Sufficiency of the Penalties in Clauses 407 and 408.

CHAPTER XX.

"Of Offences relating to Documents."

Mr. Thomas, the Criminal Judge of Rajahmundry, remarks, that the Offence stated in 443, that of obtaining Service by means of a forged Document, "is placed on a Par with the Offences of opening a sealed Letter in the Post Office Department, see Clause 433; Assault with Intent to commit a Theft, Clause 345; a false Declaration on Oath in a Court of Justice, Clause 195; Rioting, Clause 130; House Trespass and Preparation for Assault, Clause 430; Criminal Trespass by breaking open a Lock, Clause 349. And in Clause 446 of this Chapter committing a Forgery by which to harm the Reputation of another is declared liable to Three Years Imprisonment and Fine. In this Instance Punishment is awarded without reference to any Fraud committed, and is considered as grave an Offence as destroying or secreting a Document which purports to be a valuable Security. See Clause 452."—See his Report, Paragraph 35.

Mr. John Fryer Thomas, Commissioner for Carnatic Claims, remarks on Clauses 444 and 449, that they would render any Person who had in his Possession a forged Receipt to the Value of Five Rupees or other trifling Sum, liable to Two Years Imprisonment at least. In such Cases as these he thinks so great a Punishment "altogether uncalled for by the Wants of Society." Even if uttered, a Fine of Ten Times the Amount, commutable by a few Months Imprisonment, would be sufficient to check the Offence, and provide Security, especially if the Fine were made over to the Person intended to be defrauded.

Mr. George Bud, the Criminal Judge of Canara, considers, in Clauses 448 and 449, that the Words "or knowing it to be likely" are objectionable, and the Punishment appears too severe. Added to this, it puts the Man who *has* forged and the Man who *intends* to make use of a forged Document,—the Individual who makes an Apparatus for forging and he who has Possession of one *intending* to use it,—on the same Footing, and equally culpable. It appears to me that the one is deserving of a much greater degree of Punishment than the other. The one only meditates a Crime; the other has actually committed it. In conclusion, he considers 453 and 454 "much too lenient."

Mr. Austruther, the Acting Joint Criminal Judge of Coimbatore, regarding 448, suggests that "the wording should be, likely that the same *will* be used, for it is certain every Man's Seal may be used;" and on Clause 453 thinks that "altering the Address of Letters should be specified as punishable."

Mr. E. Maltby, the Joint Magistrate of Canara, considers that the Evils arising "from the Non-production of Documents necessary to the establishment of Civil Claims are so

It is frequent, that the Penalty of One Month's Imprisonment, added to Fine of 800 Rupees, will often prove insufficient in enabling a Court to procure documentary Evidence for the Decision of a Case pending before it." He suggests the Power of unlimited Fine.

Mr. Sharkey, Principal Sudder Ameen at Honore, considers the Crimes under this Head "the Bane of this Country," and attributes the universal Prevalence of them to the Severity of the present Law, and the consequent Uncertainty of Punishment. He alludes especially to, first, Forgery of Documents filed in Courts, and, second, those forged for defrauding the Revenue. He proposes to legislate for these by a summary and separate Process, without "the Formalities of a Criminal Trial," yet appealable, and punishable by Fine and Imprisonment proportioned to the Magnitude of the Offence. Under this Rule he would bring all Forgeries implying Injury to some Person or Persons, as forged Complaints, &c. He vests this summary Power in Officers of the Rank of Principal Sudder Ameen and upwards; and in the Case of Inferiors, they should forward the Complaint to their immediate Superiors. He combats at great Length the Objection, that if this Process should be adopted People will be loath to bring up true Documents, in case they be rashly condemned as false, and concludes that at least it is a less Evil than the present State of Things. Mr. Sharkey objects to the Definition of the First and Third Articles under this Head, as not sufficiently precise or conclusive, and divides the Crime of Forgery into Nine Classes of different Degrees of Criminality, all of which he finds under different Chapters in the Code; and even these "are neither so explicit or definite but what each from its general Terms may be indiscriminately applied to other Forgeries than those it seems "to allude to." He then enters into the Subject of the respective Punishments of the Nine Classes of Forgeries laid down, and compares them with the Enactments in the Code.

He does not perceive the Principle on which the Punishments prescribed in Clauses 451 and 452 are founded. While 451 leaves the Judge at liberty to award Fourteen Years in case of a Will perhaps not involving Twenty Rupees, 452 leaves it out of his Discretion to give more than Three Years Imprisonment in a Case of valuable Security forged, embracing perhaps a Lac or Two of Property.

In 453 and 454 he thinks a Difference should be made between appropriating the Packet and anything contained therein, as the latter may be of great Value, while the Letter may be of none, and proposes this Appropriation should be brought under the Head of Theft. He does not object to the Punishment in 453, but thinks the Fine should be limited. The Penalty of 454 he considers too limited, and proposes Eighteen Months; and concludes by doubting whether the Illustration annexed to Clause 441 can be considered a Case of Forgery, with which it is classed.

CHAPTER XXI.

"Of Offences relating to Property Marks."

Mr. James Thomas, the Criminal Judge of Rajahmundry, objects that the Punishment of the Offence described in the Illustrations under 457 is the same as receiving stolen Property (Clause 390), Theft (368), Extortion (369), Assault with Intent to commit a Rape (364), possessing and uttering base Coin (243 and 250), and Lurking House Trespass by Night.

Mr. George Bird, the Criminal Judge of Canara, considers that "456 is not necessary in India, but enacted, probably, to prevent the Imitation of the Company's "Chop; but that might be punished under Clause 445, which extends to Fourteen Years Imprisonment."

Mr. F. N. Maltby, Acting Sub-Collector of Canara, considers that this Chapter does not provide any Penalty for removing Property Marks. The Offence is perhaps included under other Heads, but it is under this Head that "it would naturally be looked for."

Mr. Sharkey thinks that the Offence specified in this Chapter might come under the Heads of Cheating and Forgery.

CHAPTER XXII.

"Of the illegal Pursuit of legal Rights," and Note O.

Mr. George Bird, the Criminal Judge of Canara, suggests that, in addition to the Punishment proposed in this Enactment, the Offender "should also be made to restore the Property or its Value."

CHAPTER XXIII.

"Of the Criminal Breach of Contracts of Service," and Note P

Mr. F. Lewin, Criminal Judge of Combaconum, remarks, "that the Law of Masters and Servants is left in a very uncomfortable State in the Penal Code;" and that "in such a Foreign Land as this is, where Strangers, and particularly young Persons, are constantly arriving from Europe, exposed to the Treachery and Insolence of practised Servants in large Cities, some specific Enactments had better be made for the Protection of the English, and Punishment of the Servants for Breaches of Contract and Desertion, as well as for Palanqueen Bearers only."

"Loss of Place to Servants in Europe is a severe Loss, but in these Parts it is a very slight one, easily repaired; and the Argument of the Law Commissioners, which is to the Effect that where there are good Masters there will be good Servants, does not hold."

Whole Sets of Servants constantly desert young Officers after a few Marches to join giments, after they have cheated them out of all their ready Cash; and the Misconduct of Servants generally to Ladies is often just as distressing as that of Palanqueen Bearers, when they are unprotected."

Mr. Blane thinks that the very Possibility of good Masters being deserted by their Servants should be legislated for, and considers the Case much the same as that of Palanqueen Bearers, if they desert him in travelling. He states that it is not uncommon for a Servant to engage himself to travel, and at the Moment of starting to refuse to go, and considers that such Cases should be provided for. He thinks the Judges ought to have considerable Discretion in the Matter. In illustration, he cites an Incident that occurred to himself in Goa, where, but for a Penal Enactment of this Nature, he would have been left to his Fate in Sickness by a Servant.

Mr. George Bird, the Criminal Judge of Canara, says, "I agree generally with the Observations in Note P, and that a good Master is seldom in much danger of being voluntarily deserted by his Servant; but still, as the Law stands, there is no Protection for a Master against a refractory and insolent Servant, and who may leave him at a very inconvenient Time. I think therefore there should be some Check over such Servants."

Mr. Anstruther, the Acting Joint Criminal Judge of Coimbatore, remarks, that "Imprisonment of the Deserter is not Relief but certain Loss to the deserted, as he must contract afresh. The Deserter should be forced to return and fulfil his Contract."

Mr. F. N. Maltby, the Acting Sub-Collector of Canara, says, "The Commissioners, in this Note, comment upon the Practice of unlawfully compelling Persons to act as Bearers or Coolies. It must be almost unnecessary to mention, that were Bearers and Coolies not compelled by the local Authorities to yield their Services, not a Company could march nor a Traveller move Ten Miles in many, perhaps most, Parts of India. This is a Fact which it is impossible to disguise; and I consider that in the present State of the Country some special Rules rendering it incumbent upon the Working Classes to yield their Services for a just Remuneration, or find a Substitute, when called upon by competent Authority, is absolutely necessary. The Code would then apply to Persons illegally compelled; that is, compelled by Parties not legally competent to require their Services; but without this Provision the Chapter is quite inapplicable to the State of the Country."

Mr. Sharkey, the Principal Sudder Ameen of Honore, objects to the Reasons assigned for not providing for general Cases of Contract between Servants and Masters as affording Impunity to bad Servants; and as the Law is open to both, each should be equally liable to the Consequences of their Conduct in Breach of Contract. He considers the Punishment in 463 too lenient, from the Prevalence and Unpleasantness of the Crime. He thinks the Punishment in this Case should be apportioned to the Degree of Inconvenience, and the Consequences resulting from it; proposing that it ought not to be less than Six Months Hard Labour in Irons, or exceed One Year, with from 50 to 200 Rupees Fine, commutable by Half the original Period of Imprisonment.

In case of the Circumstances noted in Illustration C happening before setting out, he suggests Fine of Two or Three Times the Value of the Contract, and Imprisonment till paid, up to Three or Four Years; and concludes by saying, that where Bearers and Coolies refuse to go the whole Extent of the Journey they contracted that they should be punished in Fine double the Amount of the Contract, or Imprisonment till paid, up to Four Months.

V. Streemavasiah Naib, Serishtadar of Chingleput, considers that the good European Masters may have little Chance of losing their Menials Services; yet this is not the Case with Natives, where each Man must be served by the lower Orders of his own Caste, and where even now, where there is a Penal Enactment, such Cases of Desertion are very frequent.

CHAPTER XXIV.

"Of Offences relating to Marriage," and Note Q.

Mr. James Thomas, the Criminal Judge of Rajahmundry, considers that, on the Subject of Bigamy, the Commissioners "have entirely misunderstood the Intention of the Law of England, in saying that it appears to have been framed to prevent the Profanation of a religious Ceremony. No English Jurist is quoted in support of this Opinion, which partly accounts for the scarcely adequate Punishment now provided for an Offence which, as the Commissioners observe, produces the most frightful Suffering to Individuals, and which, after a Lapse of a few Years, allows the same Offender to range at large again in that Society which he has so greatly offended. I may also observe, that this Enactment must be intended and conclude to apply only to Europeans, although the Code purports always to pay great Deference to the Habits and Feelings of the People of India."

Mr. Kindersley, the Magistrate of Tanjore, considers that "Anomalies in this Chapter to be traceable from the Principle of general Application that pervades it. The natural Foundation of every Code is the religious Creed of the People for whose Government it is framed. A uniform Code for People of Creeds so various and opposite as those of the Subjects of British India must be founded on some other and more general Basis, to the Establishment of which for the general Benefit Sacrifices must be made by each of the component Parts, the Feelings of the Minority on each Occasion being made to succumb to those of the Majority; and except that the Proportion of Polygamists by Religion are a much larger Proportion of the aggregate Population, there appears no Reason why a Christian should be exempted from the Penalties of Bigamy in compliance to them, any more than from those of Murder by Strangulation in Courtesy to the Thugs, or from those of Infanticide in favour of the Koonds, who both consider that they are serving God by such Practices. Such Anomalies, it is to be feared, will be much more numerous in a Civil Code constructed on the same Principle."

Mr. Boileau, the Third Judge of Circuit in the Western Division, considers that "the Code does not sufficiently apportion the Degrees of Punishment (in Perjury), nor preserve Order or Arrangement, for the Modes of Punishment are so confused and imperfectly fixed as to render this Comparison in distributing Justice unattainable, for, instead of declaring where the bad Faith lies which constitutes the Essence of the Offence, it sometimes opens a Door for a wider Breach, as with the Law of Bigamy, which expressly perverts our national Institute, by punishing it according to the Extent of Injury, rather than upon the Standard of its moral Turpitude."

Mr. Stronbone, the Criminal Judge of Cuddapah, considers that the Code "seems adapted for the Purposes for which it is framed, and contains nothing exceptionable, with the Exception of Clause 468, Chapter XXIV., which seems to be at variance with the Law of England, or, if merely meant as a concurrent Enactment, will inflict a double Punishment for One Crime."

Mr. George Bird, the Criminal Judge of Canara, considers, that "467 appears altogether unnecessary, and not likely to occur in India."

Mr. Anstruther, the Acting Joint Criminal Judge of Coimbatore, considers, that "the Chapter and Note had better be left out."

Mr. S. Scott raises the same Objection that Mr. Kindersley does on this Chapter, viz, that, "however cautiously worded and speciously argued, the Framers themselves despair of reconciling the Rights of Marriage as enjoyed by the different Nations under our Rule." He considers that it is improper to leave Bigamy unaccompanied by Deceit an unpunished Crime; and as this Enactment does not legitimize the Children, it merely benefits an unprincipled Woman. He presumes that this Law merely affects Christians in India, and earnestly seconds the Proposal to retain the existing Law applicable to them. As in Part of the Code a Difference is made between Persons of Asiatic Blood and those not so descended, "there appears no Reason why this important Law should not permit a Distinction between Natives professing different Religions."

Mr. H. Frere, the Acting Joint Magistrate of Coimbatore, says, "as a prominent Instance to this Effect, I would beg to allude to the Law of Bigamy as contained in the proposed Code, which is intended to be applicable to all Parties, to Hindoos and to Mahomedans as well as Europeans and Christians. The Authors of the Penal Code profess to have proceeded in this respect on an entirely different Principle from that of English Law, and to have made the Degree of Injury inflicted on Individuals the Standard by which the Proportion of Punishment is to be regulated. But the Degree of Injury inflicted in such Cases must necessarily vary greatly with the Habits and Feelings of the Community to which the Parties belong, and according as the Situation of the unfortunate Object of the Deception practised is viewed with greater or less Commiseration. No Comparison can be instituted in this respect between the Ideas and Feelings of a civilized and Christian Community on this Point and those of the Mass of the Inhabitants of this Country; and it is plain, therefore, that if this be conceded the Punishment allotted in these several Cases should have been differently proportioned."

"The Authors of the Penal Code appear to have been sensible of the Deficiencies of the Code in this respect, since in the Notes appended to the Code they submit it as a Question whether, Note 2, Page 90, the existing Law should not be retained for the present as regards Europeans. This may readily be acknowledged, but such being the declared Opinion of the Law Commissioners, it is not easy to account for the Circumstance of a direct Enactment not having been inserted in the Code to the same Effect."

Mr. Sharkey, the Principal Sudder Ameen at Honore, considers that "the Code does not provide for all Cases of Violation of the Law of Marriage, viz., 1st, Bigamy; 2d, Fraudulent Marriages between Persons of different Castes; 3d, Seduction; 4th, Abduction; 5th, performing the Ceremony knowing that some preventing Cause exists; 6th and lastly, sowing Dissension between married Persons to cause Separation." He proposes that the 1st, 2d, 3d, and 5th of these should be treated with reference to the particular Religion by its own Law, and that Selection should be made from the Hindoo, Mahomedan, and English Codes for that Purpose; and that Castes

that do not acknowledge these Codes should be tried by Usage. The 3d, 4th, and 5th are undoubtedly Crimes with no palliative Circumstances. Of these, the 3d, 4th, 5th, and 6th Offences have not been provided for; and Mr. Sharkey considers the Reasons in Note 2 for not punishing Seduction and Adultery founded on false Premises and Principles; for, 1st, Adultery is something more than an immoral Act; 2d, the Fact of the Natives not seeking Redress in such Cases is not immutably true, and even if so the Case of Europeans and East Indians who would willingly appeal to a Law Court should be considered. Hence these Reasons are inconsistent with the only Principle that ought to influence a Legislature; 1st, their Duty to provide a Law where there is a Crime; 2d, the Effect of the Law on the Criminal to deter him and others from the Crime. Mr. Sharkey approves of the maximum Punishment in Clause 466, but thinks that "the minimum should not be less than Seven Years;" the Fine being fixed by the Discretion of the Judge, and that the Crime therein should be more defined and explicit. In Adultery, he proposes Transportation for Life as maximum and Ten Years minimum, with Fine not exceeding 20,000 Rupees. For Abduction, from Seven to Four Years Imprisonment, and Fine not exceeding 2,000 Rupees, to be commuted for One Fourth of the original Period of Imprisonment. For the fraudulently performing the Service the same as for Bigamy, and for disturbing married Peace, from Six Months to Three Years Imprisonment, and Fine from 100 to 800 Rupees, commutable to One Third original Period of Imprisonment.

V. Streenevasiah, Deputy Serishtadar of the Collectors Cutcherry in Chingleput, considers that Adultery should be made penal; shows that Polygamy is only allowed in certain Cases among the Hindoos; and gives as a Reason for the Natives not having recourse to Law on such Occasions the Infamy of a Prosecution, the helpless Condition of the Poor, and the reported Carelessness on such Subjects of the European Judges.

CHAPTER XXV.

"Of Defamation," and Note R

Mr. James Thomas, the Criminal Judge of Rajahmundry, does not clearly see "what Principles have guided the Commissioners in the framing of the Law of Defamation. They have acted in direct Opposition to the Theory of the Criminal Law of England, which makes the Essence of the Crime of private Libel to consist in its Tendency to provoke a Breach of the Peace." The Definition in the Code he considers much too vague, and likely to render a Man every Hour liable to Prosecution. He objects to the 1st Exception in 170, as cruel, inasmuch as a Man's former Delinquencies, though fully atoned for, may be the constant Subject of the malicious Remarks of others. (See Report, Para 38)

Mr. John Fryer Thomas, Government Commissioner for Carnatic Claims, in offering a few Remarks on the 1st Exception in 170, says, "that it appears to me that numberless Instances must arise daily in Society where, unless some public Benefit is to accrue, Individuals should be protected against the Publication of Truths most painful and annoying to them, and where, if not protected by the Law, they will take the Remedy into their own Hands. The Line I should greatly prefer to the Rule in the Code is drawn in the Recommendation given in the Note Page 99, and I cannot think the Provisions in the Code founded upon enlarged and just Views of Human Nature. There is probably nothing more irritating and more harassing to a Mind which has most thoroughly repented of some gross Indiscretion, or it may even be of the Crime of early Days, than to have it continually forced back on the Memory or on public Attention in all its Details; and if the Individual has repented and reformed, and has been since so living that Society both does and ought to respect him, and can come into Court with clean Hands or a Character, I can see no Reason why he should not be protected against the public Exposure of former Frailty or Crime, made with no other View than to minister to a depraved Appetite for Scandal, or to indulge some Malice or personal Pique." Since then it is for the Interest of Society that certain Things should be forgotten, the Licence given to true yet malicious Attacks upon the Character is much to be deprecated. He further considers that the Commissioners have not taken into Consideration the Case of those who maliciously insinuate that a Person has some personal Defects or Misfortune, and is unfortunate in any of his Relations. This, though true, yet tends to make one miserable who surely is entitled to Protection.

Mr. G. Bud, the Criminal Judge of Canara, considers "that Defamation should be left to the Civil Courts. It involves a Consideration of Damages to the injured Party with which the Criminal Courts should have no Concern; besides which, the Distinction betwixt what is and what is not Defamation is too close and finely drawn, and would not be intelligible to the Generality of Individuals coming under the Law. Vide the Illustrations in this and the following Clauses."

Mr. Anstruther, the Acting Joint Criminal Judge of Coimbatore, thinks that "the whole Chapter had better be left out; it would legalize all species of Insult."

Mr. H. Frere, the Acting Joint Magistrate of Coimbatore, remarks, "that Experience proves the contrary of the Position advanced by the Law Commissioners, that 'no respectable Person will venture to institute a Prosecution for Defamation in a Case in which he knows that the Truth of the defamatory Matter is likely to be proved, since

" since it has been demonstrated in a celebrated Case of this Description, recently tried before the English Law Courts, that Persons of high Rank and Station in Society will prefer encountering the Risk of the Allegations being proved to be true to a longer Continuance under the Imputations conveyed in them. With reference to the Course proposed by the Law Commissioners regarding Cases of this Nature, it might perhaps be found more advisable in Practice to admit Evidence of the Truth of Libel, with a view to its Justification or Modification, according to Circumstances, rather than to allow absolute Immunity to Defamation, with whatever Object it may be promulgated, provided the Allegations appear upon Examination to be correct in point of Fact."

Mr. Sharkey concurs with the Reasons in Note R for the Provision that the Charges should be false, though different from other Laws and Opinions. "He has only a Doubt as to the Adequacy of the Punishment;" and suggests "that the Penal Law should be no Bar to the injured Party seeking the Recovery of any Damages or Loss actually sustained, by a Civil Action."

CHAPTER XXVI.

"Of Criminal Intimidation, Insult, and Annoyance."

Mr. James Thomas, the Criminal Judge of Rajahmundry, objects to the Enactments in Clauses 485 and 487, as being "highly objectionable and as Facts of a Penal Code novel and unprecedented." (See his Report, Paragraph 39.)

Mr. Malcolm Lewin, the Acting Second Judge in the Provincial Court in the Centre Division, in remarking upon Illustration b of Clause 485, imagines that the Power of punishing for Contempt ought to furnish a Remedy. An Affront, such as hooting at his Person, would be unworthy of Regard, and Severity is not necessary to gain for the Office Respect. If the Magistrate be a Tyrant, it is well through any Medium he be exposed; if he is not so, the Shaft is innocent. Mr. Lewin thinks Respect to Authority an Axiom and Vice of the Country, and that his own Character will be sufficient Protection to the Magistrate; while Clamour is too often the only Means of Redress in India, and should therefore not be made the Subject of penal Enactment.

Mr. George Bird, the Criminal Judge of Canara, considers "that Clause 485 might be omitted, as it is hardly necessary to punish abusive Language in this Country; there would be no End to it;" and 486 and 487 "unnecessary in India, unless perhaps for Europeans and Settlers."

Mr. Rohde thinks that Clauses 486, 487, and 488 would "introduce or rather increase in our Criminal Courts all that Chicanery which has at present, as far as my Experience goes, been confined on the large Scale to our Civil Courts."

Mr. Sharkey, the Principal Sudder Ameen at Honore, considers "the Criminality of Intimidation to be of a twofold Nature; one, the Insult offered by the Threat, and the other the criminal Intention of committing a certain Offence betrayed by the Offender." He considers that the first should be headed as Insult, and that as it is difficult to judge of the Intention so it would be sufficient to take Security for a certain Time. "With reference to Clauses 485 and 487 (assuming them to allude exclusively to Offences of the Nature described in the Illustrations annexed to them), I do not perceive any essential Difference in the Offences alluded to in them to require a Difference in the maximum Punishment, which I think in both Cases may be Three Months, with a Fine not exceeding a Hundred Rupees, to be commuted, if not paid or realized, to further Imprisonment to the Extent of Half the original Period."

In the Case contemplated in Clause 486 the maximum Punishment need not, I think, exceed Six Months as regards Imprisonment, and 200 Rupees as regards Fine, to be commuted to One Third of the original Period of Imprisonment.

(Signed) W. DOUGLAS,
Register

Enclosure 10 in No. 78.

The COMMISSIONERS for the RECOVERY of SMALL DEBTS, MADRAS, to the CHIEF SECRETARY to GOVERNMENT.

Court of Commissioners for the Recovery of Small Debts.
24th December 1839.

Sir,

WE have the Honour to acknowledge the Receipt of your Letter dated the 10th instant, addressed to this Court; and we beg respectfully to state, for the Information of Government, that having Jurisdiction only in Civil Suits, and not having administered any System of Criminal Law, the Court is not conversant with the Subject of which the proposed Penal Code treats, and is therefore unable to offer any Observations in respect of its Provisions.

(Signed) G. L. PRENDERGAST,
Acting 1st Commissioner.
JOHN SAVAGE, Commissioner.
J. Y. FULLERTON, Commissioner.

Sir,

Fort St. George, 11th February 1840.

With reference to the Orders of Government of the 5th instant, I do myself the Honour to explain that my Backwardness in complying with the Requisition for my Observations on the proposed Penal Code has originated in the Feeling that my very limited Experience in the practical Administration of the Laws rendered me incompetent to record any just Comment upon it; and I shall perhaps expose this Incompetency, in the Opinion of many, when I state that I think the Promulgation of the Code in its present State would be highly beneficial.

(Signed) G. L. PRENDERGAST,
Acting Chief Magistrate and Superintendent of Police.

(No. 445 S. 727.)

No. 79.

H. CHAMIER Esq. to F. J. HALLIDAY Esq., Junior Secretary to Government.

Neilgherries, Ootacamund,
10th September 1840.

Sir,

In continuation of my Letter of the 7th April last, No. 76 (290), I am directed by the Right Honourable the Governor in Council to transmit, for Submission to the Right Honourable the Governor General of India in Council, the accompanying Copy of an Extract from the Proceedings of the Board of Revenue, containing their Observations on the Penal Code framed by the Indian Law Commissioners.

Dated 13th Aug.
1840. No. 309.

I have, &c.
(Signed) H. CHAMIER,
Chief Secretary.

Enclosure in No. 79.

(No. 309.) Revenue Department.

EXTRACT from the PROCEEDINGS of the BOARD of REVENUE, dated 13th August 1840.

Para. 1. In conformity with the Orders of Government of the 14th March 1838, the Board of Revenue proceed to make such Observations on the Penal Code framed by the Law Commissioners as their Experience and Relief from their ordinary Duties enable them to offer.

2. The Board consider it unnecessary to follow the Commissioners through their preliminary Explanation of the Line pursued by them in bringing into Form this Code of Criminal Law, or to discuss the Practicability or Policy of constructing any One Code which is intended to be universally applicable to the Condition and Circumstances of the various Nations of India now subject to British Rule, in preference to the Modification and Extension of existing local Laws, with reference to Exigencies rendered conspicuous from Practice and Experience.

3. The Board do not consider it the Wish of the Supreme Government that the Authorities to whom the proposed Code has been transmitted for Remark should attempt to criticise every Section in detail, but rather to confine their Observations to such Portions of the Law as may be more immediately applicable to their own Department, or of general and of universal Import.

4. The Difficulty of forming a fair Judgment on many Points included in the Enactment is much enhanced by the Law of Procedure being yet incomplete, and which may hereafter correct or explain what may now appear inconsistent or unnecessary.

Chapter I.

5. The general Explanations contained in this Chapter appear to be well calculated to remove much of that Ambiguity which is generally so conspicuous a Deformity in Law, and to render intelligible the Intention as well as the Words of the Code; and though many Cases must arise in the practical Operation of the Law which will require explanatory Adjustment hereafter, there is no Doubt that the Commissioners have been highly successful in this important Portion of their Labours.

Chapter II.

6. The 2d Chapter on the Subject of Punishments being One of universal Import, the Board consider themselves called upon to make such Observations as their Experience enables them to offer.

7. First, as to the Punishment of Death. Much as it is to be wished, for the Cause of Humanity, that the Punishment of Death could be altogether removed from our Statute Book, the Board are of opinion that the Commissioners have successfully demonstrated the

the Necessity for ~~which~~ Power being still retained in the Hands of judicial Authority in Cases of Murder, gross Attempts to Murder, or High Treason, the more so as Government is empowered to commute this Punishment for any other Punishment provided by the Code.

8. The Board are also satisfied of the Correctness of the Reasoning which has led the Commissioners in all Cases of Transportation to transport for Life. Transportation beyond Seas is regarded by the Natives of India generally with a peculiar Feeling of Terror, from the Mystery probably "which accompanies the Fate of the transported Convict." It is on this Feeling that the Efficacy of Punishment depends, and, as observed by the Commissioners, "this Feeling would be greatly weakened if transported Convicts should frequently return, after an Exile of Seven or Fourteen Years, to the Scene of their Offences and the Society of their former Friends."

9. The Power with which Government is invested of commuting a Sentence of "rigorous Imprisonment for One Year," or upwards, or "Imprisonment for Two Years" or upwards, passed upon a European, to Banishment for Life from the Company's Territories, appears at first Sight arbitrary and oppressive; but a full Consideration of the Explanation offered by the Commissioners of the Grounds upon which this Power has been given has satisfied the Board of the Propriety of such Power being vested in the ruling Authority. The Board most fully recognize the Principle, that nothing can add more to the Strength of the Government, or can be more beneficial to the People, than the free Admission of honest, industrious, and intelligent Englishmen; but they are equally satisfied that no greater Calamity could befall either the Government or the People than the Influx of Englishmen of lawless Habits or blasted Character. It should be the Object of the Government to encourage by every Means the Settlement of the former Class, whilst it should be equally their Desire to get rid of the latter. There is little Fear of the Power thus proposed to be vested in Government being abused, as it is only directed against Men who have been convicted before a Judicial Tribunal of Crimes which render their Removal desirable.

10. The Commissioners have laboured to define the Law to the greatest possible Extent, with the Intention of leaving nothing doubtful, or liable to the various Opinions and Constructions of the Executive Officers; but in reviewing the Chapter on Punishments, it is impossible not to remark that with respect to the Nature and Extent of the Penalties of Fine and Imprisonment a boundless Discretion is left to the presiding Judges, and in this Point the Code appears to the Board to be seriously defective. It may, however, hereafter prove that much that appears objectionable now will be perfectly and judiciously arranged by the Code of Procedure, and the Board therefore refrain from further Observation.

11. It is true that Fine is a Punishment to which it is almost impossible to fix any Limit of Amount, with reference either to the Nature of the Offence or the Circumstances of the Offender.

12. A heavy Fine imposed on a Person of even small Means, if he is supported by a powerful Party or by wealthy Relatives, may be no Punishment at all; but it is still essential to the impartial Administration of Justice that Limitations should be defined to the greatest possible Extent, and as little be left to the Discretion of Individuals as the Case permits, and in framing the Code of Procedure much Restriction may be imposed to this important End.

13. The Amount of Fine is in some Cases limited and in others unlimited, without any apparent Reason for the Difference. In some Cases of no great Criminality Imprisonment and Fine to any Amount may be inflicted, whilst in others a Restriction is imposed, for which no peculiar and sufficient Cause is perceptible.

14. A Person in a State of Intoxication entering a House and annoying the Inmates is subject to the Penalty of Twenty-four Hours Imprisonment and a Fine of Ten Rupees only; whilst an offensive Word or Gesture is punishable to the Extent of Two Years rigorous Imprisonment, or unlimited Fine, or both.

15. In the Exception to Liability to Punishment for harbouring a Person who has been guilty of a heinous Offence, or who has secreted a Felon having escaped from Confinement, a Husband or a Wife is held free from Blame. To attempt to check the natural Impulse of the good Feelings of the Human Heart by Penal Laws would be useless as well as injudicious, and public Convenience must in this Case give way; but in such serious Crimes as harbouring Offenders, and enabling Convicts to avoid Re apprehension, to extend the Impunity to all direct Relations appears to give a wider Scope to the evil Propensity than is absolutely necessary. The Connexion of the Parties may be very properly admitted in mitigation of Punishment, according to the Nearness of the Relationship; but Exemption from Punishment altogether appears unnecessary and wrong.

16. Of the Abuse of the Powers of public Servants. This Part of the Enactment appears to the Board to be comprehensive, forcible, and effectual, and if any Exception can be made to a general Approbation of its Provisions, it is in the Leniency with which the Corruption of Judges and other public Functionaries is treated. If the Imprisonment of a Judge is at all an appropriate Measure, Two Years simple Confinement appears to be an objectionable Limitation of Punishment.

17. With respect to the Penalty attached to Corruption in public Native Servants, the Board think it necessary to make a few Remarks. The Commissioners propose to declare

the Giver of a Bribe punishable only when it can be proved that the Offence originated in him by an Offer, and by his instigating the Receiver to commit the Offence.

18. In their Notes upon this Subject the Commissioners have explained the Grounds on which they have come to a Decision, "that it would be unjust and cruel to punish the giving of a Bribe in any Case in which it could not be proved that the Giver had really in his Instigation corrupted the Virtue of a public Servant who, unless Temptation had been put in his Way, would have acted uprightly." The Board concur in this Opinion, and would carry the Exemption still further.

19. In legislating for the Prevention of this Offence it is essentially necessary that the Prevalence and Extent of the Evil should be duly considered.

20. It may appear illiberal to make a sweeping Charge of Corruption against the larger Portion of our Native Establishment, but practical Experience in the Administration of Indian Government in all its Branches brings every public Servant who looks minutely into the Transaction of official Business to confess that our Example and our Laws have failed in an eminent Degree to suppress that prevailing Vice. We found Corruption inherent in every Branch of every Administration to which ours succeeded. We have endeavoured by Liberality, and the Distribution of Honours and Advancement, to improve the Tone of our Native Service in this important Point, and much has been effected; but it is too evident that much still remains to be done, and that the more powerful Aid of Punishment must be brought into more effectual Operation to secure the Object aimed at.

21. How far the proposed Enactment promises to reach the Root of the Evil deserves mature Consideration. The Commissioners have come to the Conclusion that the Giver of a Bribe shall be considered culpable only when he has volunteered the Offer, and induced the public Servant to receive it, without any Demand, expressed or implied, on the Part of the latter. As the Motive of both Parties is criminal, the only Doubt that can exist is as to the best Means of securing the sufficient Punishment of the more guilty of the Two. Bribery is an Offence of peculiar Difficulty of Conviction, as the Paucity of Cases in our Records, notwithstanding the notorious Frequency of the Occurrence, abundantly proves. To exonerate the Giver of a Bribe from Criminality, and to admit his Information and Evidence towards the Conviction of the Receiver, is an important Addition to the Means generally available to the Conviction of a corrupt public Officer; and with this view it may perhaps be desirable to go still further than the proposed Law does in holding the Offer of Bribes free from penal Notice, and to encourage the Information against the Receiver by the Repayment of the Bribe presented, and to secure his Conviction by the Evidence of the Giver in Cases even where the Act was voluntarily originated by the latter without any Hint being expressed by the former. Though Evidence may be obtained of the Receipt of a Bribe, it will seldom be possible to ascertain beyond a Doubt with which Party the Suggestion originated, and indeed so seldom that it appears unwise to draw the Line, and preferable to declare the Givers, under all Circumstances, free from Prosecution as Instigators of the Offence.

22. In the present State of Society of India Bribery is not considered a moral Offence, but a mere Breach of the Regulations of Government. The Penalty attached to it is well known to the Officers of Government, but the great Body of the People labour under the double Disadvantage of Ignorance of the Law, and daily Proof that Bribery is the most effectual and often the only Means which Individuals possess of obtaining the due Aid or Interference of Government through their Native Servants. These Facts, and the Importance of obtaining Information and Evidence to lead to the Conviction of corrupt Officers, and to check an Evil of undoubted Importance, incline to the Determination that the Givers of Bribes shall be treated with Impunity, and admitted as Evidence in all Cases.

23. The Acting Second Member having sent in his Remarks upon the Code, as far as he was concerned, in his judicial Capacity, to the Court of Sudder and Foujdary Udalt, has not taken any Part in these Proceedings.

No. 80.

The Hon. Sir E. J. GAMBIER to the Right Hon. the Earl of AUCKLAND.

My Lord,

Madras, 28th October 1840.

I BEG to assure your Lordship that I have not been unmindful of the Subject to which the Legislative Council did me the Honour to direct my Attention in their Letter of the 12th August 1839. But I confess that the View which I have taken of the proposed Criminal Code is one which I have felt great Reluctance in declaring, and which I should still feel extreme Diffidence in laying before your Lordship, were I not fortified in my Opinion by the Communications which I have from Time to Time had with Persons of Judgment

Judgment, and Experience, and whose Views I find very greatly to coincide with my own. But for this Support I should still hesitate to declare my Sentiments with regard to the Work in question, a Work which has emanated from those whose Talents I greatly admire, and which is framed with so much Skill and Ability. Apologizing, then, for venturing to place myself in opposition to the Members of the Law Commission who drew up the Code of Criminal Law, I will now venture freely and candidly to state my general Impressions on the Subject.

I have always entertained the strongest Doubts of the Propriety or Expediency of promulgating any Code of Law which professes to be more than a Compilation and a better Arrangement of those Enactments which have previously been in force, and which former Experience has sanctioned and approved; and I have always thought that such a Body of Law should be modified by those Additions and Alterations alone of which the same Experience has evinced the Utility or the Need. To do more than this, to put forth a Body of Law which is not even founded upon any previously existing System, and to clothe the Enactments in Language which is as new to those who are to dispense the Law as to those who are to live under it, appears to me a Mode of Proceeding irreconcilable with the Maxims of practical Wisdom, and one calculated to introduce a Degree of Confusion and Difficulty which has never yet been found in administering the Criminal Justice of any civilized Country.

I think that for practical Purposes a Body of Criminal Law for this Country will be best composed by a judicious Combination of the Enactments which are in operation under the Regulations of Government with the Principles of English Law as administered by the Supreme Courts, carefully selecting from the different Systems, not only those Parts which appear to be most excellent in themselves, but those also which are best adapted to the existing State of Society, adopting as far as possible the Terms and Expressions which are common to the English Law and to the Company's Regulations, and, where such cannot be found, giving a Preference to the Language of the Regulations.

Such being my general Opinion on the Code in question, and not feeling sure that it is the Intention of your Lordship and the Legislative Council to adopt the Code which has been submitted to Government by the Law Commission, I do not enter into the Consideration of the different Parts of it.

If, however, notwithstanding the Objections which I have here stated to the Principle of the proposed Code, it is still determined to adhere to it, and the Legislative Council shall do me the Honour to desire my Opinion in filling up any Part of its Details, I will not fail to give the best Attention in my Power to the Matters on which Suggestions may be desired.

I have, &c.

(Signed) EDWARD J. GAMBIER.

No. 81.

The Hon. Sir ROBERT COMYN to the Members of the COUNCIL of INDIA.

Honourable Sirs,

Madras, 14th September 1839.

I HAVE the Honour to acknowledge the Receipt of your Letter of the 12th ultimo, requesting Observations and Suggestions relative to the proposed Penal Code.

Before I ventured to make any Observations thereupon, I was desirous of being acquainted with the Forms and practical Machinery by which the Code was to be carried into effect. As I presume, however, that these are not ripe for Publication, I will lose no further Time in supplying you with my Opinion upon several Parts of the proposed Law, and as soon as the present Term has expired address myself to digesting and adding to such Notes as I have already made upon the Subject.

I have, &c.

(Signed) ROBERT COMYN.

The Hon. Sir ROBERT COMYN to the Hon. the PRESIDENT of the COUNCIL of India
in COUNCIL.

Honourable Sir,

Madras, 11th November 1839.

IN pursuance of your Request, that I should make Observations and Suggestions upon the proposed Penal Code submitted by the Indian Law Commissioners, I have now the Honour to forward you the most material Observations which have occurred to me on its Perusal.

The Practicability of introducing One general System of Criminal Law for all the Inhabitants of British India is a Question of such Magnitude, requiring accurate local Knowledge and an intimate Acquaintance with the Habits and Characters of so great a Variety of People, that at the Outset I must profess my utter Inability to grapple with it. My Experience has been almost exclusively confined to the Administration of Criminal Law at the Presidency of Fort St. George under the English System, built up on Notions not unfrequently inapplicable to the Native Society of India, and too often clogged by technical Subtleties, which, if intended to protect the innocent, occasionally assist in the Escape of the guilty. I certainly should be very far from advocating the Extension of this System beyond the Limits of the several Presidencies; whilst I think it highly desirable that if the Mofussil is to be governed by Regulations emanating from British Authority, these should be assimilated throughout the Territory as far as the Nature of Things may permit. In reviewing the proposed Code I have therefore endeavoured to allow myself to be as little influenced by the Prejudices of Education and professional Habits as could reasonably be expected, and to consider myself called upon to remark upon an entirely new Compendium of Law, by which the Persons and Property of those who reside in India under the British Dominion may be best protected.

In adverting to the various Provisions of the Code, I have found myself continually embarrassed from my Ignorance of the Manner in which it is proposed to carry them into effect. Much must indeed depend upon the Enactments of the "Code of Procedure," and on the Machinery by which the Penal Code is to be set in motion. Under the System of Criminal Pleading now in force at the Presidencies it would be, I conceive, Matter of the greatest Difficulty, not to say Impossibility, to frame the Heads of Accusation so as to meet many of the Provisions of the Code. The very Introduction of new Terms and new Definitions would be a great Impediment. The Value of the Code must of course depend upon the Manner in which it is to be made available, and I can therefore only repeat that at present my Notions of the Propriety or Impropriety of some of the Provisions must be considered premature, and, to myself at least, unsatisfactory.

Before I advert to the particular Heads of Enactment, I will take the liberty of pointing out Two or Three Imperfections, which, as a System of Criminal Law, seem to pervade the whole.

In the first place, the System of "Illustration" seems to imply a Doubt in the Mind of the Compilers whether their Definition of Offences be sufficiently clear and intelligible. Great Assistance will no doubt be afforded when the Illustration meets the Case directly before the Court; but as no Set of Illustrations can be supposed to meet every possible Case, the greatest Exactness should be obtained in defining the Offence without resorting to the Aid of an Illustration. To find the Case before him exactly hit by an Illustration, and the next entirely devoid of such Assistance, might throw greater Difficulties in the Way of a Judge not expert in the Art of Construction than if no Illustration had been supplied in any Instance. Many of the Illustrations also are in themselves objectionable, as supposing Cases scarcely possible, or a Combination of Circumstances not merely improbable but even ludicrous. Others involve Cases which can hardly be considered as falling within the Range of Criminality, but which might be implied to be such but for the Existence of Circumstances wholly adventitious. Thus, in Clause 69, Illustration (a.), the Criminality of one Man's writing and sealing Letters with another's Paper and Wax is made to depend upon the Degree of Acquaintance between them, and "the Usages of Society;" so that, unless an Acquaintance be made out sufficient to imply Consent, according to the Usages of Society, the writing and sealing of the Letters are to be considered as Acts calling for Punishment by a Criminal Court. So in Clause 72,

and the Illustrations, the Criminality of doing "Harm" depends upon whether the Person ~~harmed~~ be of ordinary Sense and Temper, and likely to "complain of such Harm," and the "Harm" given in the Illustration is a "slight Hurt" by pressing Z against the Side of Carriage. Now, considering that no Party in his right Mind would think of demanding Damages in a Civil Action for such an Aggression on his Property and Person, it seems straining the Criminal Law to suppose the Consumption of the Time of the Court in ascertaining the Quantum of Acquaintance in the one Instance or the Sense and Temper of the Party in the other.

Another Objection, which applies to a Variety of Clauses, appears to me to be that the Commission or Non-commission of an Offence is made too much to depend upon what may be passing in the Mind of the Party offending at the Time of his committing the Act laid to his Charge. According to the Law of England, as it at present stands, where a Party does an Act, the obvious Tendency of which is to produce an Injury, and such Injury actually occurs, he will be considered as having intended the Mischief so produced by his Act, or, in other Words, where a particular Consequence necessarily results from any Act, the Party doing the Act is to be considered as *prima facie* intending such necessary Consequence.

It must be admitted that Instances may occur in which this Doctrine may bear hard upon the Accused; while, on the other hand, to permit a Person who has committed an Injury to set up his private Intentions as Defence or Excuse, and to allege that he did the Injury from virtuous Motives, or from a wrongful Impression of the Law or the Fact, would frequently produce a Defect in Justice, and allow Offenders to escape.

Now, amongst other Exceptions of Chapter III. of the Code, Clause 62, the Party's *Belief in good Faith* that he is commanded by Law to do an Act exempts him from criminal Liability; and in Clause 63, the Exemption arises from a Man's exercising a Power given him by Law, and acting *to the best of his Judgment exerted in good Faith*. So a Child, above Seven and under Twelve, cannot be guilty of an Offence unless he shall have "attained sufficient Maturity of Understanding to judge of the Nature and Consequences of his Conduct on that Occasion." Again, by Clause 68, a Party will not be within the Code who commits an Offence under Intoxication from a Substance of the *intoxicating Quality of which he may be ignorant*. In all these Cases a most perplexing Question must be left to the Court relative to the State of Mind of the Party charged with the Offence. In the First Case, did he *in good Faith* believe he was commanded by Law? In the Second Case, did he exert *the best of his Judgment in good Faith*? In the Third, had the Child attained sufficient Maturity, &c.? In the Fourth, did the Party *know* the intoxicating Nature of the Means of his Intoxication? So in some Instances the Delinquent's *Impression* will determine whether the Act be an Offence or not.

Clause 95, Illustrations (s) (t). In other Clauses, *Misconception* is Innocence. 82, Illustration (b), 87 and 99. According to which last the Inquiry must involve *Two* Questions of Misconception; and so in Illustration (a) to Clause 98, A's Guilt of Murder is made to depend *on his considering it likely* that Murder would be committed by B. In these Instances which I have adduced (and I could have adduced many more) the Mistake seems to be in making the Question of Crime or no Crime depend upon the Want of good Faith, &c., so as to throw upon the Prosecutor the Burden of averring and proving the Absence of good Faith or Misconception. The Code of Procedure may perhaps remove Part of this Difficulty, by simply requiring Averment and Proof of the supposed criminal Act, and leaving the Party accused to satisfy the Court that he acted from such Motives or Impressions as, according to the Penal Code, may negative his being guilty at all.

Another Objection which strikes me as affecting some Parts of the Code is its treating Acts which are really Outrages on Society as merely Offences to Individuals, and certainly confounding the established Distinction between civil and criminal Responsibility. Thus Clause 69 appears to proceed upon the Maxim, "*Volenti non fit Injuria*;" and it might be an Answer to a Civil Action by an injured Person that the Injury was inflicted by his own Consent. But the Public are surely interested in the Preservation of the Limbs as well as the Lives of the Queen's Subjects; and if such a State of Society can be imagined as that in which one Man may allow another to inflict upon him any bodily

Injury short of Death, it would well become the Legislature to step in and save Persons from the Consequences of their own "free and intelligent Consent." In a Country thoroughly civilized a Law such as is indicated by Clause 298 would in all probability be a dead Letter; but in India, where so much Self-infliction and voluntary Torture are resorted to, it seems necessary to protect Men from themselves, rather than offer Impunity to those who are assisting in their Sufferings.

If there be anything in this Observation, it applies in a far greater degree to what in Chapter VIII., Clause 298, is called "Voluntary culpable Homicide *by Consent*," and for which Imprisonment and Fine are the Punishments to be awarded. The Clause, it is true, is guarded by several Provisions, One of which relates to the State of Mind of the Party consenting to be killed. Putting aside, for Argument's sake, all religious Considerations of a future State, and merely adverting to Man's strong natural Love of Life, even in the most desperate Circumstances, the mere Fact of a Person consenting to be killed would indicate a morbid State of Mind sufficient to raise a Doubt of his Sanity. I cannot think that in any Country, or under any Religion, *voluntary* Homicide should be leniently dealt with, or that any special Circumstances, like those supposed in the Note, would justify a Law introducing a novel Offence of Homicide "by Consent."

These are the chief general Observations which have occurred to me on an attentive Perusal of the Text and the accompanying Notes. Many Objections which had suggested themselves to me in the former have been entirely or in great measure removed by the satisfactory Reasoning of the latter. I have therefore only to add a few brief Observations upon particular Chapters and Clauses.

In Chapter X., of Offences against Public Justice, the Propriety of the Exception to Clause 190 may be questioned, unless the Word "fabricates" be meant to be restricted to such Acts of the Party himself as are indicated by Illustration (a). Fabricating Evidence may include the procuring of other Men's false Testimony; and a Party who evades Conviction by such a Proceeding ought not to escape from the Consequences of One Crime by the successful Commission of another.

At Clause 201, the Offence of escaping from Custody is made punishable; but I do not observe any Punishment awarded to the more guilty Officer permitting the Escape, further than by Reference to the Chapter on Abetment.

I scarcely find anything to observe upon Chapter XI, and the Six following Chapters, and I have already anticipated a Remark on the only Part of Chapter XVII. which appears to me objectionable. I may, however, add, that the Language of Clauses 308 and 309 is extremely vague, and that "carrying an Act or Omission to the Length the Offender *contemplates* as sufficient to cause Death" is a Mode of Expression utterly destitute of legal Precision.

Chapter XIX. appears to have commanded a very large Share of the Compilers Attention, and strikes me as a very successful Digest of Law for the Protection of Property. I do not feel that I can point out any important Omissions in the Provisions of that or the Three following Chapters.

Chapter XXIII. introduces a Novelty in our Criminal Jurisprudence, and the Reasons for this Innovation, as stated in Note P, appear to me satisfactory; but Clause 464, relative to Offences by Seamen, is quite inadequate to enforce Subordination on board a Ship, and by its Leniency forms a remarkable Contrast to the Severity of many existing Acts of Parliament relating to Shipping. If it is intended that the present Code should supersede the Laws at present in force for the Punishment of mutinous and insubordinate Mariners on board Merchant Vessels, it would be well to view Acts of Insubordination, especially where accompanied with Violence, in a more serious Light than criminal Breach of Contract. The English Law is itself extremely confused upon this Topic, and the relative Rights and Duties of Masters and Mariners very ill-defined; and a Chapter upon this important Head might be advantageously introduced in the present Compilation.

Chapter XXIV. "Of Offences relating to Marriage," is admitted to be "framed upon Principles widely different from those on which the English Law is framed." The few Clauses it contains seem framed solely in respect of the Individual upon whom the Fraud is practised, and have no Reference to the Outrage

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Outrage upon public Morals involved in the Crime of Bigamy. This Offence is not overlooked in the French Penal Code (see Sect. 340), and certainly, as far as the Christian Community is concerned, ought not to be omitted in a Code for British India. The delicate Arrangement supposed in Paragraph 4 of Note Q would well deserve Punishment both in the "Lover" and his Paramour; and I agree in the Recommendation "to retain the existing Law relating to Bigamy as applicable to Christians in India."

Though I am inclined to agree in many of the Arguments adduced in Note R to Chapter XXV., I have not been able to arrive at the same Conclusions as the Writer of that Note on all the Points he labours to establish. It is certainly not necessary to make Slander an Offence with reference to its Tendency to cause a Breach of the Peace. Its very Nature is so odious, and its Consequences so injurious to the Public and to Individuals, that for its own Sake alone it well deserves Punishment. But I much question the Propriety of putting verbal Slander upon the same Footing with that which is written or printed. Much Mischief may undoubtedly be done to Individuals by verbal Slander; and for this by a Civil Action a Party may obtain, not merely Damages, but the Opportunity of vindicating his Character, provided the Slander were without Foundation. But to make a Party *criminally* liable for defamatory Words, passionately or inconsiderately uttered, would require great Nicety in drawing a Line in respect of the Tendency of the slanderous Imputation. To institute a criminal Proceeding for every injurious Expression which might escape the Mouth of an angry Man would be to give an Importance and Permanency to what might be despised and quickly forgotten; to say nothing of the Consumption of Time in the Tribunals were such Prosecutions encouraged or facilitated. On the other hand, written or printed Slander implies so much Deliberation, and frequently ensures so wide a Circulation, that Criminal Courts may advantageously be resorted to for the Protection of Character as well as for the Security of Property.

Upon the Question, whether the Truth of the Imputations contained in the supposed Libel should be admissible in Proof by way of Defence to a Criminal Prosecution, I in great degree coincide with the Views of the Writer of Note R. I think in every such Prosecution the Defendant should be allowed to show that he has advanced no more than the Truth. But I also think that he should be bound to prove that *all* he has advanced is true; that if some Part of the obnoxious Publication be true, but other Parts false, the partial Truth should fail to protect him; and that in all Cases of Failure to prove the entire Truth the unsuccessful Attempt should ensure an aggravated Degree of Punishment.

Upon the last Chapter (XXVI.), particularly with reference to Clauses 485, 486, and 488, I would merely point out the extreme Vagueness of the Words "insult" and "annoy," and "cause Annoyance to any Person." Here the Offence is made to depend almost entirely upon the sensitive Feelings of the Person complaining of the Annoyance, and not upon any distinct Definition of the Acts intended to be punished. The Guilt, therefore, of the Party uttering the Word or Sound, depends not so much upon the actual Offensiveness of the Word or Sound as upon whether the Utterance be made before A or B. Here again a *private* Offence is converted into a Matter for public Prosecution; and supposing both A and B to be present when the Word or Sound is uttered, and A only to be annoyed, then the Delinquent is to be punished for an Offence as perpetrated against A, and acquitted of the same Act as perpetrated against B.

I have, &c.

(Signed) ROBERT COMYN.

No. 83.

GEORGE NORTON Esq. to the SECRETARY of the SUPREME GOVERNMENT. .

Sir,

Fort Saint George, 9th July 1838.

1. I HAVE the Honour to acknowledge the Receipt of your Letter of 12th February last, conveying the Wishes of the Supreme Government that I should examine the Penal Code which has been prepared by the Indian Law Commissioners, and report for its Consideration such Observations and Suggestions as my Acquaintance of mine with the Subjects to which it relates may dictate.

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2. This is a Task which, upon a critical Perusal of this proposed Code, I should be very desirous of declining, inasmuch as I regret to say that my Objections to it not only extend throughout almost all its Details, but also to the legislative Principles upon which it has been drawn up. The Supreme Government, on the other hand, appear to contemplate its practical Applicability; and it must be admitted to be the Production of Gentlemen of approved Talents, of various and not inconsiderable Attainments, combined with much local Experience possessed by the Majority of them. Any unsparing Exposure, therefore, of assumed Errors and Defects will be at much Risk of my own personal Discredit, and very discordant with those Feelings of Estimation I entertain towards those Members of the Law Commission with whom I have the Honour to be acquainted.

3. Independently, however, of the common Obligation on all to contribute such Aid to public Objects as it may have been thought desirable to call for by the Government of their Country, my own official Position prescribes a Duty in the present Instance which excludes any Deference whatever to Choice or inclination. My only Caution must be, in expending my own Attention on the Subject, not frivolously to consume that of Government.

4. I have formerly held much Communication (both written and verbal) with the highest Authorities in India upon the Subject of consolidating the Laws and meliorating the Administration of Justice in this Country. With regard to the Practicability of digesting into One general Code the *whole Body* of the Law and Course of Procedure to prevail throughout India, I conceive the very different Conditions, Habits, Feelings, Usage, Religion, Language, and Degrees of Civilization among the People subject to the British Sway, independently of the Want of a permanently settled System of Government, and of Consolidation of the Indian Dominions themselves, present, in the existing Age, insurmountable Obstacles to the Success of any such Attempt as a simultaneous Effort. That is an Attempt which, as it appears to me, must be left to some future Period, when the gradual Assimilation, as well of the above Sources of Disunion as of the Laws themselves, and a more permanent Consolidation and Settlement of the Government, may render so elaborate an Undertaking feasible. But I have long been of opinion that no insurmountable Obstacles exist to a Digest of the Law, and of the Course of administering it, for *some particular Districts*, although, of course, the Difficulty varies according to the Extent and Quality of the different Provinces; nor any serious Obstacles to the Compilation of a Code which, like the proposed Penal Code, shall comprise *One general Department* of the Law, more or less common, by the Order of Nature itself, to all Classes of Mankind. I have, however, always expressed my Conviction, which subsequent Reflection and an Examination of the proposed Code has tended to confirm, that the only right Method of proceeding towards the Compilation of any such Body of Law is by digesting and *adapting* each existing Laws as Experience has proved to be conducive to the Ends of Justice; comparing together in some degree the Laws prevailing in different civilized Nations, rejecting such as Experience or sound Reasoning may prove to be inexpedient or even of doubtful Policy, introducing new Laws to meet well-considered Exigencies wherein existing Laws are silent or inadequate, and arranging all the Laws retained for Adoption systematically, after a close scrutiny of their component Parts, with a view to Clearness of Comprehension and Readiness of Reference,

5. Whether this was the View actually taken by those Ministers under whose guidance the late Charter Act (3d & 4th Wm. 4. Cap. 85.) was framed is more than I can confidently aver; but that it was the View taken by the Legislature of England seems apparent from the Language of 53d and 54th Sections of that statute. The eventual Objects in constituting the Commission are expressed to be the Introduction of a general and common System of *Judicial Establishments*, the Enactment of Laws which, as far as Circumstances permit, are to be *common*, and the ascertaining *Laws and legal Customs prevailing*. The course to be practically pursued by the Commission with a view to such final Objects is, to *inquire* into the Jurisdictions and Course of Procedure in different Courts, and the Quality of the Laws prevailing, and *to report* upon them, *suggesting* requisite Alterations and Amendments. I cannot imagine any directions or Language more clearly calculated to denote a Desire that existing materials for a general System of Law should first be ascertained and collected,

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and that from a Digest of such Materials (incorporating such new Laws as Exigencies might dictate, and which were not incompatible with local Peculiarities,) either One general Body of Law, or separate Codes of some general Departments of Law, should be consolidated. And certainly, without meaning to arrogate that any Suggestions of my own led to the Appointment of this Law Commission or to their Instructions, such were the Objects, and such the Course of attaining them, which I took upon myself to suggest in those Communications which I have alluded to having held with the Authorities in this Country Five Years before the passing of the Charter Act.

6. It is only the preliminary Task of inquiring, ascertaining, and reporting upon prevailing Laws and Customs which by the literal Language of the Statute is delegated to the Commissioners. The eventual Labour of framing any Code or Codes of Law, which, according to the Views I have stated as to the right Method of accomplishing such an Undertaking, would call into Exercise, not only great Powers of Mind, but extensive Learning in the established municipal Laws of some civilized Country, if not in those of our own,—some Experience and Knowledge of their actual Operation and Effects,—some considerable Learning in Jurisprudence as a Science,—some Acquaintance with the Laws and Course of administering Justice prevailing in other Countries, and particularly with such known Laws and regulated Course in administering them as subsist in India,—and, finally, some considerable Acquaintance with the general Habits and Customs peculiar to that Country, is no more than alluded to in the Statute. The Undertaking, if applied to any comprehensive Department of the Law, would, under the Charge of Persons possessed of even these eminent Qualifications, prove one of vast Labour and a Work of Time. It may, however, have been contemplated (though the literal Language of the Act hardly warrants that Construction) to delegate this Task, as well as that of ascertaining and collecting the Materials for it, to the present Commissioners; and I by no means presume to offer any Opinion as to their requisite Qualifications for the former Duty, further than by testifying my Reason to know personally that One of the Members at least of the Commission has no inconsiderable Learning in the English Law, and has also had much Opportunity of observing how far the Course of Procedure under it may be applicable to a Country similarly situated to India, and that other Members possess extensive Acquaintance with the Laws and Customs prevailing in this Country, and the Regulations of the Indian Governments.

7. But be this as it may, and whether I am mistaken or not in my own Views, or in those of the English Legislature as to the right Method of codifying Laws for this Country, and as to the Qualifications of those who shall attempt it, it is plain, from the preliminary Letter of those Commissioners who have signed that Letter, as well as from their Annotations on the proposed Code, and indeed from the Quality of the Code itself, that such a Method of drawing one up has not been adopted.

8. The Commissioners intimate that they have so far pursued those preliminary Steps pointed out by the Act as to have made Inquiry into the present State of the Penal Laws prevailing in India. They have taken Suggestions from all the Systems of Criminal Law there administered. They have further compared their Code, not only with those Systems, but also in some degree with the most celebrated Systems of Western Jurisprudence.

9. This indeed is not exactly the Task prescribed by the Statute, and it is a far more laborious and extensive one if critically performed. No more, however, is probably meant than some general and cursory Reference to such prevailing System of Law in this and other Countries as the Commissioners were not theretofore acquainted with (except, as it seems, the Penal Laws for Louisiana, drawn up by Mr. Livingstone), and the Adoption of some Suggestions which on such a cursory Reference might occur. The Commissioners do not profess to have proceeded on a profound or familiar Knowledge of all, if indeed any, of these Systems; and as regards the Systems of Western Jurisprudence, they naturally allude to their scanty Means of Information. The Criminal Law, however, as administered in the Provinces, was probably pretty well known to several of the Members of the Commission; and it may have been justly thought of a Quality not deserving of a very laboured Examination by those previously unacquainted with it. As regards the Knowledge acquired of the English Criminal Law prevailing in India, One of the Members, as an English

Lawyer of considerable Standing and Experience, would have been a great help, but little Labour in that Inquiry. The Service of that Member has, it appears, unfortunately, from Absence and ill Health, been altogether lost, "at the very Time when those Services were most needed." Under these Circumstances, and considering how much Time must have been expended in the actual drawing up of the proposed Code, it cannot be supposed that in the course of Two efficient Years much Time or Labour was devoted to the critical Examination, and still less to any orderly digesting, of other Criminal Codes prevailing in this or any other Country.

10. Such Reference as was made to existing Systems of Laws led the Commissioners at once to abandon them all as Materials out of which to digest a Body of Penal Law, and they avow that their proposed Code "is not a Digest of any existing System, and that no existing System has furnished *even the Groundwork*" of it. This, in my Opinion, is a Demerit fatal to the whole Work. To invent a new System of Law, founded for the most part on a Knowledge and Experience of Human Nature, aided by such cursory Reference to existing Systems and to local Usages as have been noticed, and not without some Consideration of the Philosophy of Jurisprudence (the "*Legum leges*," as Bacon better terms such Learning, and some of whose Maxims may be traced in the Disquisitions accompanying this Code), is stated by the Commissioners to have proved by no means "an easy and simple Task." Comparatively, however, with the Process of digesting a Code by the Course I have suggested, the Task has been, as it appears to me, an easy and simple one. It has been accomplished by the Commission, some of whose Members have been at various Times changed, and all of whom have been much employed in other legislative Duties in the Period of scarce Two efficient Years. By the Course pursued by the Commissioners it appears to me a very "easy and simple Task, even for "ignorant and inexperienced" People, to concoct a Penal Code of a *faulty and inadequate Quality*; but it is a Task which, in my Opinion, surpasses the most gigantic Powers of the mere Intellect, to invent one for a populous, civilized, and prosperous Empire, (whatever may be the Case as regard small newly-formed Colonies or Associations of barbarous People in early Ages) which shall surpass in Adequacy and inherent Merit the best existing Body of Penal Laws, all other Guides being discarded save such as have been consulted in the present Instance.

11. While observing on the Materials and Information which have been consulted or rejected by the Commissioners, I ought not to omit any Notice of One Author who seems greatly to have influenced and in a great measure to have guided them in the Preparation of their Work. I am aware that the late Mr. Livingstone, the Projector of the Louisiana Penal Code, has been the Subject of unsparing Eulogy among a certain Class of strong Thinkers, as having introduced into practical Operation and enforced by powerful Argument many of the Doctrines of Mr. Bentham in Penal Legislation. Some of Mr. Livingstone's Tenets, however, the Commissioners themselves contest, and I must be allowed also to express my own Dissent to others, as well some which appear to have been adopted by the Commissioners as some which it was not within the Scope of their present Task to allude to. In short, while many of the Principles adopted or recommended by Mr. Livingstone are by no means new, most of his real Novelties in Theory and Detail are either contested or repudiated by such Statesmen and Lawyers who are most guided by Learning and Experience. While the Merits of his Opinions and his Labours, therefore, are so very contestible, and almost totally untested by the Sanction of their Effects, it seems to me premature to pronounce upon his Character as "an eminent Jurist" rather than an eloquent Essayist, and the more so as he himself appears to lament his Deficiency in jurisprudential Learning, and alludes, almost in the very Words of the Commissioners, to his "very scanty Means of Information."

12. It would be easy to point out those Tenets of Mr. Livingstone, the Soundness of which is at least more generally contested than conceded, did I not fear to wear out that Attention which is probably wearied ere this, if it has been exercised at all. But a more pertinent Reason for my noticing the marked Deference of the Commissioners to Mr. Livingstone's Labours is, that I cannot but apprehend that they have been mainly influenced in their Contempt for the English Penal Law, and their Abandonment of all "*Inquiry and Report*" thereon, as One of the Systems of Criminal Law "*prevailing in*

India, in which there is to be made for some "Groundwork" for their proposed Code, by the Portrait which this Gentleman has drawn of that Law, a Portrait in drawing which it is hard to say whether he is in reality misled himself or has merely given occasion for the Misconception of others.

13. Mr. Livingstone traces out in forcible Language a long List of Atrocities and "Follies" which have from Time to Time characterized the English Criminal Laws, and the Principles on which some Parts of it are founded:—Constructive Criminality,—the Use of Torture,—Denial of Counsel's Assistance to the Accused,—Corruption of Blood,—burning of Heretics and Witches,—indiscriminate Punishments of Death for the most enormous and the most trivial Offences,—unintelligible Texts of Law, and *judicial* Legislation in Letters of Blood;—all these Disgraces of the Customary Law and of the Statutes, in barbarous or infatuated Periods, present a sufficiently odious Array to condemn any Penal Law that ever existed. But if the Commissioners have (as I confess appears to me not improbable) rested satisfied with this Representation of the English Criminal Law, it is enough to say that they have mistaken a distorted View of Laws no longer existing,—all of which have been long obsolete in Practice, and almost the whole expressly annulled, for a Pattern of that Law which (with the Exception of a few contested Points) is administered by enlightened Judges among a satisfied and civilized People, with at least Fairness and Efficiency. It does not appear to me, indeed, that Mr. Livingstone aims at generally characterizing the English Law as actually existing, at any One Time, much less as it existed when he wrote, since which so many important Amendments have been made in it. It has, however, become of late Years a Fashion to depreciate the English Criminal Law itself, and the Administration of it. This is a Feeling which appears to me founded in Delusion, and in no small degree to have arisen from the successful Efforts recently made for the Amelioration of some Portions of it; for the Public are apt enough to judge of the Bulk by the Sample.

14. As the Principles which have actuated the Commissioners in their Composition of their Code are set forth in Argument, and as the greater Propriety of their Course, or, contrarywise, of that which I have presumed to suggest, must depend mainly on the Justice or otherwise of those Principles, I will crave to enlarge a little in the way of Examination of them. I must at the same Time deprecate all Charge of Malignity in so doing, or in venturing any Remarks on the Details of the Code itself. The Commissioners indeed say, "that the best Codes extant, if indignantly criticised, would furnish Matter for Censure in every Page." Surely it can hardly be meant that the Systems best arranged and best sanctioned by the Experience of Ages are all of them open to *just* Censure in every Page; neither can I presume it intended that the present Code is no more open to fair and *just* Censure than the best existing Codes. But if this is not meant, to say that this and all other Systems of Law is open to *unfounded* Censure, is to say nothing at all, for everything in Existence is open to unmerited Caviel.

15. With the Knowledge of the prevailing Systems of Law acquired or previously possessed to the Extent which has been referred to by them, the Commissioners observe that they have the less Reluctance in *rejecting them* all as any Groundwork of their proposed Code, and in introducing a new System, inasmuch as "there are not the same Objections to Innovation in "*Penal* Legislation as to Innovation affecting *vested Rights* of Property." Without disputing upon Words, as excluding the Idea of Criminal Law affecting *vested Rights* of Property, I cannot admit the Truth of this as a general Proposition. It appears to me that as Criminal Law is founded for the most part on the Principles of Human Nature itself, that Law which prevails in actual Practice, and which is usually consonant with those Principles, will least of all bear Innovation.

16 The Reasons assigned for rejecting the Penal Laws prevailing in the Provinces of India as a Groundwork for a systematic general Code of Criminal Law for India are forcible and obvious. These Laws are inconsistent with each other; they are sometimes inconsistent with plain Justice; they are inadequate, and they are vague in point of Expression. But although this, as it appears to me, must be acknowledged, the Commissioners have paid so much Deference to this Body of Law (which they have denied to all others) as to proceed by digesting and reducing to general Heads its Provisions upon Two

Classes of Offences, those "relating to Contempts of Authority," and those relating to "Offences against the Revenue." These Regulations, however, I consider to offend as much as any others in the Imperfections I have noticed; and I must take the liberty to add, that I think the Chapters of the Code in which these Provisions are incorporated are among the most faulty in the Volume. At the same Time there does not appear to me just Reason for excluding altogether, as a component Portion of the Materials of a general Code, such of them as derive their Force from local Peculiarities in the Habits of the People or in their Condition. Neither does it appear to me that the Mahomedan Law or the Regulations of Government have *altogether* superseded the Hindoo Criminal Law, though those Regulations have certainly superseded in a great degree the Mahomedan Criminal Law. But while the Commissioners animadvert on the Quality of the Provincial Criminal Law, as set forth mainly in the Government Regulations, it seems to me that they might have pointed out the obvious Cause of their Imperfections, namely, that they were framed as Exigencies appeared to arise, by those who did not apply to their Task any Learning or Acquaintance in the Laws of other Countries. They did not, any more than the present Commissioners, take as their Ground-work any System of Criminal Law whatever; and if in attempting isolated Law upon particular Subjects these Imperfections should naturally have resulted (for I can testify there was no Want of Talent in the Composition of some of those branded by the Commissioners as among the worst of them), there is still greater Reason to expect the same Results from Efforts similarly applied to the Preparation of a general Body of Law. I shall have occasion indeed to point out the same Defects still more palpably displayed throughout the Details of this proposed Code.

17. It will not probably appear a Digression to illustrate the Consequences of an inconsiderate Deviation from precedental Forms in the Composition of substantive Laws, by a Reference to the Act of Government, No. XI. of 1835, commonly called the *Press Act*. There is the less Reason for considering such Remarks impertinent inasmuch as this Law is in a Manner engrafted into this Code under Chapter XVII., and it may at all events answer a useful Object to call the Attention of Government to the Necessity of its Revision. The plain Intention of this Act was to secure, by the Means of Identification afforded, the Responsibility of Publishers of periodical Papers. There is a Precedent of long standing, in the Statute of 38 Geo. III. Cap. 88, of the Provisions for best accomplishing this Object, which, though not so complete as to preclude all Possibility of Evasion, has answered passably well in practical Operation. These Provisions, except as supplying the mere Principle of the Law, have been cast aside or left unnoticed by the Framers of the Act of Government. Such, however, is the Vagueness and such the palpable Omissions in the Clauses of this Act of Government, that, as Experience at Madras has shown, it has proved from the very first totally inefficient for any Purpose whatever; and, except as showing the *Object* of Government, it might as well have never been passed. It is not very clear whether *both* Printer and Editor (supposing, as is usual, they are different Persons,) are required to be registered. But as the Printer can hardly fail to be a *Publisher*, in the legal Sense of the Term, it is sufficient to satisfy the Act that the Printer alone should be registered. Anybody engaged in the manual Printing, therefore, would suffice for the Purpose, and anybody concerned in delivering out the Paper will answer the Term of the *Publisher*, if both are required to be so registered. Neither the actual Editor nor the actual Proprietor need be so, and in Practice *never scarcely are*. I have known but One Instance of it. Some trivial Persons,—Natives usually,—just so connected as to answer *legally* the Description, are accordingly registered, whose Name and Responsibility are of no sort of Importance. Moreover, as soon as the Parties, of either or both Quality, (such as they are,) so registered, leave the *particular Presidency*, there is an End of all their Responsibility, and indeed of *all Jurisdiction* over them; for it is only on leaving the *Territories of India* that *any* new Registration need take place. When that *new* Registration does become *necessary*, it is only "*a* Printer" or "*a* Publisher" need be registered, and he may reside in *any Part* of those Territories. There is no Residence of any Printer or Publisher required to be registered; there is no particular Magistrate designated before whom the Registry is required to be made; and there are a Variety of Magistrates, of various Qualities, Degrees, and Jurisdictions

tion, exercising Authority at the Seat of Government, and scattered throughout each Presidency. Heavy Penalties are enacted, and no particular Jurisdiction or Mode, pointed out either of adjudicating or levying them. These are by no means *all* the Omissions and Uncertainties, for I could show some in every single Clause; but I conceive they are sufficient to show that the Act rather prescribes than precludes every Facility for avoiding Detection of the Parties responsible for Publications; and in fact on the only Two Occasions where Identification under the Provisions of this Act was attempted Failures occurred of even fixing the *nominal* Parties registered, from the inadequate Language of the Act on *other* Points than those above noticed.

18. To return, however, from this Digression, the Reasons assigned for rejecting the Criminal Law of England prevailing within the Jurisdiction of the Three Supreme Courts as any Groundwork for the proposed Code are, that, 1st, it is "a very artificial and complicated System; 2d, a Foreign System; 3d, framed without the least Reference to India; 4th, is generally considered to require extensive Reform; 5th, and pronounced by learned Lawyers to be so defective that it can be reformed only by being entirely taken to Pieces and reconstructed." None of these Positions appear to me to be well founded, nor, even if they were so, to supply adequate Reasons for thus rejecting that Body of Laws.

19. First—I am altogether unable to account for the Opinion of able and intelligent Men that the System of English Criminal Law is very *artificial* and *complicated*, except by the Assumption that they never can have scrutinously examined it. My own Opinion of its being simple, and easy of clear Apprehension, is founded, not only on personal Experience, but on a Reference to the common Experience of all others professionally engaged in the Administration of it. It is a Department of the Law the Elements of which scarce occupy a Volume, and the whole Body of which, contained altogether within Two or Three, is so easily mastered in the Course of a few Months Study and of a few occasional Attendances in Criminal Courts, that Practitioners engage in it professionally, and Judges, whose whole previous professional Life has been devoted to a totally different Line of Practice, undertake the Administration of it, with no other Preparation. Many obsolete Penal Laws there undoubtedly are, of mere temporary or local Application, which, annulled as they are in Practice by Changes of Times and Circumstances, it behoves Government to annul likewise by Authority; but so unknown and unnoticed have they long been, that it required no small Industry in the English Commissioners to bring them to Light; they can hardly, therefore, be considered as wound up in the System of English Criminal Law, though they may be looked on as composing an ugly Exerescence which deforms it. It is true, also, that that Branch of it which regulates the *Course of Procedure* involves many formal Technicalities, the Meaning and Reasons of which are not at a cursory Glance apparent, and the Application of the Text Law to the multifarious Combinations of Circumstances in Life necessarily (as must be the Case with every System of Law, however simple in itself,) supplies Food for Casuistry. General Impressions of this Nature have perhaps mainly contributed to the Denunciation of this Body of Law by the Indian Commissioners. But, in the first place, had they examined the Subject with but ever so little Criticism, they would have found as well the sound Reasons as the Convenience, if not Necessity, of those formal Technicalities, and the Comprehension of them would have been proportionally facilitated; in the next place, they would have acknowledged that the reported Cases are by no means extensive, —often unnecessary Illustrations of plain Texts,—and that no Stint can be applied to their Multiplication, in the proposed and every possible Code, other than the Discretion, sound or otherwise, of those who may choose to raise Questions, and of those who may choose to report their Solution. It is to be remarked, however, that *the Course of Procedure* in administering the Law forms no Part of the present Code of the *Law itself* to be administered, though unquestionably it must be considered as forming Part of that and of every other Branch of Law. I cannot agree, however, that even as regards the Plan of Procedure by the English Criminal Law such a System can be considered as *artificial* or *complicated*, the Reasons of which are plain, and the Expediency of which has stood the Test of long Experience, and the whole Bearings of which are comprehended by ordinary Minds with Facility. And here I will venture my Impression, that should this Code ever be brought

into operation, the Comments, Limitations and Explanations which ~~must~~ necessarily be grafted upon it before it can become practically applicable, will be so many and so argumentative as to render the System of Law created thereby incalculably more complicated and difficult of Comprehension, if ever it becomes comprehensible at all.

20. Second.—It does not appear to me that any System of Criminal Law which has prevailed under the Sanction of long Experience in one civilized Country can strictly be considered to be *foreign* to any other Country which deserves to be similarly characterized. Montesquieu does indeed apply great Learning and Sagacity (much of which, profound and interesting as his Disquisitions are, I will presume to say has been expended to very little practical Purpose,) to manifest how Laws of every Quality are and ought to be attuned to Times and Circumstances, and to the Conditions and Habits of different Countries. But, as regards the Theory of Crimes and Punishments, as well the Position itself as the Doctrine applies in a very partial Degree; for the common Consent of all political Associations, however rude or however advanced, and the common Voice indeed of Nature, stamps its Fiat on most Species of Criminality. Still more am I at a loss to understand how any System of Law can with strict Propriety be called *foreign* which obtains in Peace and Satisfaction among the superior and best informed Classes of a Population, from whatever Sources originally introduced. Be this as it may, the only rational Imputation against any System of Law, whether actually foreign or but recently introduced, is its Want of Adaptation to the Feelings or Interests or political Well-being of a Community. Modified as the English Criminal Law is in this Country, I think it would be vain to seek any Proof of such Incompatibility. The trite Charge of a Lawyer's narrow-minded Bigotry in favour of Laws most familiar to him may and probably will suggest itself, where that of Ignorance of other Systems of Law would be more appropriate. I will not, however, assume to say that Germany or France *may* not furnish a Code as well adapted to this Country as that of my native Land. At the same Time I will not scruple to avow my Opinion that there is something morbid in that affected Contempt for the English System of Criminal Law which has prevailed of late Years, and most among those who have taken least Pains to understand it. Upon this I have remarked before, and I shall but add, that this Feeling towards the English Criminal Law has been rather invigorated than diminished by the indiscriminate Eulogiums it was formerly the Fashion to encumber it with.

21. Third.—That the English Criminal Laws were *originally framed* without reference to India is indeed true, and it is equally true that some (perhaps many) of them were framed without reference to England itself. Some have been introduced from Gothic, some from even higher Celtic Sources; some from the Roman Civil Law; some from the Canon Law. Such Inquiries are curious, but they appear to me to be idle. But if it is meant that the English Criminal Law where it prevails has been *introduced* without reference or even without Adaptation to the Condition and Habits of the People of India, that is at least a most unguarded and erroneous Assertion. What Consideration may have been given to that Condition and those Habits in introducing the Criminal Law of England under the Charters of the Presidency Courts passed during the last Century I cannot say, further than that I presume it was but little, if any at all. But a recent Statute has passed (9 Geo. 4. Cap. 74.) which has been expressly enacted for settling the Administration of the English Criminal Law in the Presidencies of India, and which sanctions and adapts the greater and more important Portion of that Law; and I must confess I see no cogent Reason for rejecting (subject to trivial Modifications) the Application of that Law, as far as it goes, and apart from any Consideration of the Course of Procedure, throughout all the Provinces under the British Sway.

22. Fourth. That the English Criminal Law requires *some* Reform may be conceded. Whether that Reform should extend to a few though important Particulars, and whether it should be applied to many though minor Points, is a Topic of much Dispute, and of undeviating Vigilance on the Part of the Legislature; but that this Law is *generally considered* to require *extensive* Reforms is what I can by no means admit, or that it does in fact require them. On the contrary, I conceive the Proposition of extensive Reforms has only been broached to be repudiated by almost all who have considered the Subject, and by all the more judicious and experienced Lawyers and Statesmen in England.

When I speak of *Reforms*, I of course refer to *Additions, Alterations, and Abolitions*; for as to Reform, by *digesting* and *adapting*, the Commissioners assume that, being such as it is, it is not worthy of that Labour.

23. Fifth.—But, independently of other Reforms, the English Criminal Law is said “to require being taken entirely to Pieces and reconstructed on account of its *Defects*.” This is a vague, and to my Mind an incorrect Expression. A Body of Laws may require Reconstruction, although ever so excellent or even clear in themselves. A Reconstruction under such Circumstances may mean no more than *Arrangement*, Omission of expletory Matter, and the Annulment of obsolete and inexpedient or contradictory Enactments; and this in point of fact appears to me the only Object of the English Legislature in appointing the English Law Commissioners, for almost precisely the same Purposes as the Indian Commission, to *inquire* and *report* on the State of English Law; not with a view that the English Criminal Law shall be pulled to Pieces, and scattered to the Wind, and a new System constructed, but with a view that it shall be eventually *digested*, and *adapted*, and *newly arranged*, as soon as the Materials and Means shall have been collected together, and a Consideration shall have been maturely had of such Additions and Alterations (few, and for the most part trivial, as I conceive they will be,) as may have been suggested by these learned Labourers. But if this is the only Reform contemplated or required for the English Criminal Law, I cannot admit the Justice of this Reference to the Opinions and Measures of the English Law Commissioners as a Ground for repudiating a similar Course as regards the prevailing Law here, or for rejecting the English Penal Law, as supplying a safe and firm Groundwork and ample Materials for constructing a Penal Code for this Country, subject to such Modifications, with respect to the Condition, Habits, and Usages of the People, as the Statute organizing this Indian Commission points out.

24. The Commissioners do not assign any Reasons for rejecting all *Foreign* System of Penal Law as a Groundwork of their proposed Code. As I know little of any One of them, I cannot say that there is any better, nor will I presume to say they are all worse than our own. The common Ignorance which I may without Offence suppose prevails and is likely to continue among the Commissioners, whoever they may be, of Foreign Systems of Law, compared with their Knowledge of that of our own Country, will always be in itself a sufficient Reason for not resorting to any Foreign Code with a view to its Adaptation to any Part of the British Dominions. At the same Time I am of opinion that it would be better to resort to any Body of Criminal Law prevailing in a highly civilized Foreign Nation, for the Purpose of Adaptation, than to construct a Code without adopting any existing System of Law whatever as a Groundwork of it.

25. In the Pursuit of my invidious Task I will now advert to some Particulars pointed out by the Commissioners as characteristic Merits in their proposed Code.

26. Independently of the intrinsic Qualities of the Laws propounded, a superior Degree of Precision and Simplicity has been aimed at in the Language of the Text, aided by a copious Use of Illustrations and Eplanations.

27. The Commissioners vindicate the Propriety of making a Body of Laws so plain that the People at large shall clearly understand and be aware of it. To expect this, as regards the Laws of a Country generally, or even in a minor degree, appears to me quite chimerical. To expect the Body of Penal Laws of a State under which Crime is restrained and punished shall be known and understood by the lowest and most vicious Portion of the Population who are the Objects of such Laws seems to me equally vain. Such an Attempt, I conceive, could only be efficient in a comparatively small Community of Barbarians. In all prosperous, civilized, and populous Countries the Law necessarily becomes a Science; its Rules multiply and become complicated in proportion to the almost infinite Variety and Gradations of Rights and Wrongs; all that can be hoped for is, that a certain and competent Portion of the People should gain a thorough Knowledge of its Laws, so that from them may be infused a general Notion of the Rules which guide the Dispensation of Justice, and through them may be attained an accurate Ascertainment of those Rules, and an Assurance of their being fairly put in operation.

28. But whether the Object be by the Course adopted to facilitate the Comprehension of this Code by the People at large, or more especially by those

who devote their Lives to its Study and Administration, that Object appears to me very ill-accomplished, and but little likely of Accomplishment, by the Method pursued. The Text, or what ought to be the *mandatory* Parts of the Law, sometimes involves Definitions and sometimes Explanations, and the very Principle of such a Method of Legislation is, that the Text should deal in generalizing Terms, which in the present Code are abstract to a peculiar Degree. The necessary Consequence, as it appears to me, is that such a Text Law should be "loosely worded," and abound in "vague Expressions," which are acknowledged to be Evils of the First Magnitude in Legislation. To point out Specimens in this Code, I would allude to the frequent Introduction of the "*Intention*" and "*Impression*" of Parties committing Acts as the *substantive* Ingredients of Criminality. The *Principle* of Law certainly is, "*Nullum crimen nisi mens sit rea*;" but it is an equally sound *Principle* of Law that Intentions must be judged of by the *Acts themselves*, and that every one must be *presumed* to intend that which his Act to ordinary Sense is calculated to effect. But when "*Intentions*" and "*Impressions*" are made the substantive Objects of Inquiry, Confusion and Uncertainty, and subtle Distinctions, at once flow in upon the simplest Matter of Investigation. If it should be said that these "*Intentions*" and "*Impressions*" are not meant to be Subjects of Inquiry and Proof, but to be presumed, on the Principle I have noticed, then the Introduction of the Qualification can have no other Effect than to puzzle or mislead. Again, the Definition (Clause 26) of a "*voluntary*" Act (*illustrated* as it is), that certain Acts not at all intended, but even the reverse, may be voluntary, because done by "*Means known to be likely to effect such a Result*," appears to me another Specimen of vague and loose Legislation. Such a Definition, it may be observed, of a *voluntary* Act, furnishes an obvious Commentary on the Fallaciousness of enacting specifically upon *Intentions* as the Criteria of Criminality. So palpable, indeed, appear to me these loose and uncertain Terms as characterizing the whole of this Code, and of consequence rendering it peculiarly difficult of Comprehension, if not impracticable, that I know of scarce a Page of it from which similar Specimens might not be extracted.

29. It seems to me but a clumsy Mode of Legislation to resort to the Use of general and abstract Terms, and then to append Illustrations and Explanations by way of clearing up Vagueness and Obscurity. But even if such a Method of Legislation laboured with no inherent Imperfections, the Explanations, most of them, effect but little of that Aid towards Simplification and Precision for the sake of which they are introduced. They either, for the most part, announce the plainest Truisms, or they supply arbitrary Constructions foreign to the ordinary Meaning of Terms employed. Thus it does not appear to me requisite to explain to the learned or the unlearned that (Clause 3) all are guilty of that which all co-operate in effecting, still less that an "Act" denotes occasionally something effected by a "Series of Acts," which I presume is the Meaning of Clause 25. But it is much more requisite, in my Opinion, than justified, to explain that by the Word "*fraudulently*" in this Code *may* sometimes be meant a Deprivation of Property amounting to a forcible Robbery, an Explanation incontestibly to be gathered from Clauses 15 and 16.

30. The Office of the Illustrations is stated to be the same as that of *Reported Cases*; but there is this Distinction between these Illustrations and those Law Cases, that whereas the latter are generally speaking drawn up to elucidate the Application of Principles of Laws to some peculiar and unprecedented Combination of Circumstances, the former for the most part explain the Application of the Text of the Code to Circumstances where such Application is quite obvious, and in which no Report of the Case would be necessary or tolerated. To enact through the Medium of express Clauses that there is no Crime in committing an Injury too trivial to be felt at all, and in which Consent may be implied (which indeed is but to elaborate the short legal Maxim "*De minimis non curat lex*") may possibly escape Comment; but to illustrate such Positions by several such Cases as that of a Man seating himself in a public Carriage, and pressing slightly on his Neighbour in the Act, or taking a Dip of Ink from a Friend's or Master's Inkstand, can hardly escape Ridicule.

31. The utmost Effect, however, of these Illustrations (as in *Reported Cases*), is to show how the Law operates on that particular Contingency. When

When the Text of the Law is plain, and the Contingency common, the Illustration must be obviously a Pleonasm. It is worse, for it is illusory, when the Text is loose or general and abstract, and the Contingency simple and common. That particular Case may indeed fall within the Terms of the Enactment; but Thousands of others may occur, or be devised, in which the Application of the Text may be doubtful; and it is very easy to point out Cases within the Letter of some of these Enactments to which they can never have been meant to apply. Thus it can hardly have been meant that the Term "fraudulently," as has been noticed above, should include Highway Robbery. So the Definition of "Counterfeiting" (Clause 20) can surely not be meant to include the Labours of copying Painters or of Artists of Flowers. So Clause 49, literally construed, prohibits a Criminal who has forfeited his Property from acquiring thereafter any Property in the very Coat on his Back. Again, under Clause 63, a Person *believing* he has *lawful Power* to do an Act by Law declared to be criminal, as Cheating or Smuggling, may do it with Impunity, and the legal Maxim, "*Ignorantia juris neminem excusat*," the Abandonment of which lets in the most extensive Irresponsibility, is repudiated. Indeed there is a whole Catalogue of Offences in Chapter XIV. all depending upon the Party's "*Belief*" as to the Effect of certain Acts. Further, under Clause 96, the Degree of Criminality of an *Abetment* is made to depend on whether "any Act" is done *in order* "to the committing of the Offence intended;" and a gross Case of Criminality, abetted and *effected*, is appended by way of Illustration. But supposing the "Act done *in order*" is of a trivial Nature, and the Intention to commit the Offence is even abandoned afterwards, and no such Offence committed, yet the Punishment is the same. I have adduced a few Instances from among the first Chapters, but such Instances abound throughout, and more palpable Specimens might possibly be selected to prove my Position.

32. The Commissioners perceive the probable Imperfection of their Text Law, and point at the Difficulty, nay Impossibility, of such generalizing Texts, including all Cases to which their Application may be intended; and yet I imagine it to be clear, that Enactments by Text and Illustrations can only suffice when that Text is so complete as neither to comprehend too much nor too little. A Case improperly falling within it, or improperly excluded from it, vitiates the whole Law. Many such existing Cases render it utterly impracticable. When I see Illustrations by Cases exactly conforming to the Text, and am at the same Time conscious of others by no means legitimately reducible to it, I am led indeed, as the Commissioners intimate the Students of the Code ought to be, "through the same Steps by which the Minds of those who framed the Law proceeded;" but seeing that the Text is not framed from any Examination and Digest of the various Grades and Qualities of Crimes at which such Texts point, I am (I must freely say it) irresistibly compelled to the Conclusion that in many Instances the Illustrations were made first, and the Text devised for the Illustrations and not the Illustrations for the Text.

33. In deprecating the Accumulation of *constructive* Decisions, and appealing to their own Illustrations as calculated greatly to limit such constructive Rulings by the Judges, the Commissioners assume the comparative Completeness and Precision of the Code they promulgate. Such constructive Decisions must necessarily accumulate in proportion to the Inaccuracy, the Vagueness, the Defects, and Imperfections of the Code. To exclude Judicial Constructions is of course impossible; but the only Way I can conceive of limiting them is to provide a Text which shall be the Result of an Investigation into every Species of Crime, and into the Rules and Language of existing Systems of Law devised for the Repression of them. But to elaborate such a Digest of Penal Law is to proceed by a Course the very reverse of that which has been adopted by the Commissioners. They first devise a Law grounded on no existing System whatever, and with no other Assistance from them than a superficial and partial Reference to other Systems, and then, after deprecating Judicial Constructions, on the assumed Sufficiency of their Text, in conjunction with a few Explanations and Illustrations furnished by obvious Cases, they propose to build up a completer Code by the Materials to be supplied from those Functionaries who administer their Law, and who are to report on the Doubts, Inconsistencies, Uncertainties, and Defects of such Law.

34. If I could think that the Rules of Law comprised in this Code were clear and efficient Guides as to what was criminal and what the Penalties of

Crime, and that but little Room remained for needful Comment and Construction, I would say, that in the one Instance of Legislation at least Theory and Invention might supply Rules better than Induction. But, so far from forming any such Opinion, I can discover scarce Twenty Clauses which, if brought into operation, will not give rise to Doubt and Difficulty; insomuch that by the Process proposed for the gradual Amendment of the Code it would either be overwhelmed with additional, distinguishing, explanatory, and exceptive Clauses, or it would require Reconstruction throughout. Whether and when the Materials which Experience might thus furnish would suffice for an efficient Penal Code, founded upon the Text and Structure of this, is beyond the Means of Speculation. Novel Theories of Law, enunciated in a novel Style of Language, and to be administered mainly by Persons uninstructed in any legal Learning, will probably produce no small Confusion and Discrepancy of Opinion. But I will venture to say, that whether little or much be added to the present Code from such Sources as Materials for a completer one, the original Code, with all the Judicial Constructions and Decisions upon it, will not in the Course of several Ages yield a resulting Body of Law so clear, so comprehensive, or so rational as what might be at once framed by pursuing the Course pointed out by the Statute, namely, by collecting and arranging the Penal Laws now prevailing, and digesting thereout, with suitable Additions, Alterations, and Omissions, such a System of Penal Rules as have been tested by the Sanction of Experience.

35. This Subject of Penal Legislation and codifying of Laws is so extensive in its Nature, so many important Topics have been touched upon in the Commissioners explanatory Letter, and the Notes accompanying their proposed Code, and so much debateable Ground opened, that it is not easy to fix Limits to Discussion, nor satisfactory to omit what appear pertinent Observations. I have, however, already said more than enough to account for, if not to justify, my own Objections to the Principles on which this Code is framed, and at the same Time (if those Objections are well founded) to account for the necessary resulting Defects of all its Details. I am anxious to quit the Subject, and feel no Temptation to follow up the minor Criticism and Abuse which has been lavished on selected Portions of this Work. Looking at the Objects aimed at in drawing up this Code, and the Method pursued in its Composition, I feel compelled to submit my Opinion that the Commissioners have misconceived their Task and misdirected their Labour. I do not think the Code calculated for practical Operation, and least of all where it is first recommended to be introduced, in the Mofussil. At the Presidencies, where the Administration of the Code would be qualified by legal Learning and long Professional Experience, the Exposition of this Code would be made in a great degree to square with the acknowledged Principles and the specific Requisitions of some settled System of Jurisprudence; but in the Mofussil, where this Law would have to be studied, and where no other System of Law deserving the Name prevails, or has been more than glanced at, I can contemplate no other than a Course of arbitrary, uncertain, and inconsistent Decisions, equally at variance with the Intentions of the Authors of this as with the Injunctions of any other existing Body of Law.

36. The Duty cast upon me would scarcely be half fulfilled if I altogether omitted Observation upon the *Details* of this proposed Code. The Difficulty is in compressing such Remarks as may arise within the proper or desired Limits. Where in so important a Code so much is new in the Law itself, and so much more new in the Style of its Enunciation, there are but very few Clauses which do not call for and have not probably met with copious Discussion. The Clauses are numerous which if introduced singly to the Notice of the Home Legislature would occasion great Division of Sentiment, and corresponding Length and Variety of Argument. To undertake a general View of the whole Body of these Enactments, examining their Principles, criticising their Language, commenting on their Defects, and suggesting susceptible Amendments, would be an overwhelming, and, I may presume, an unprofitable Task. At the same Time I think it must be considered as a Characteristic of a Code of this novel Description, that it cannot be safely adopted without a minutely critical Examination throughout all its Details by those possessed of high legal and political Attainments. A Digest founded on existing Laws, and on such Amendments and Additions as Circumstances might

might suggest, may require indeed greater Labour in the Compilation, but as it seems to me, it by no means involves such a Contest of Opinion and such an Amplitude of necessary Discussion.

37. I must therefore at once avow my Conviction that the Condition of Human Society in this and in all civilized Countries is such as not to admit of penal or indeed any other Legislation upon the Plan of enunciating abstract Text Principles of Law, illustrated by explanatory isolated Cases. The vast Variety and Complexity of Circumstances, of Interests, of Rights incidental to Human Actions, the very Imperfection of all Languages, are calculated to baffle all Human Ingenuity to bind them under Regulation of such abstract Definitions and logical Generalities. So far from precluding casuistical Distinctions and quibbling Arguments, such a Course is, in my humble Opinion, eminently adapted to engender them. My Notion in fine is, that the Details of any Code like the present must aim as much as possible at mandatory Precepts upon Matters of Fact.

38. Such a Course has been in effect adopted in the Simplification and Exposition of the Criminal Law of England by the Text Writers. If what has been done by them discursively, and by way of Exposition, should be done *authoritatively* and by Course of Classification, detailing and characterizing (as far as may be) the *specific Acts* of Criminality through all their Variety, and awarding the appropriate Punishments, I do conceive a Code might be formed neither perplexing to common Apprehensions nor cumbrous in Extent. I think, also, that (apart from all Consideration of inherent Merit in any particular Body of Criminal Laws) such Course, founded upon *some* existing Body of Laws, is the only one that can, with any Security, as regards Results, be practically recognized, unless a Constellation of Jurisconsults should arise, such as the World has not yet known, who might undertake, on the Strength of the public Faith in their Qualifications for the Purpose, the Composition of a totally new System of Penal Legislation.

39. After these Remarks on the general Quality of the Details of this proposed Code, it appears to me that it may be sufficient if I should confine myself to such Notices upon the Contents of the various Chapters as may serve to exemplify what I consider radical and characteristic Defects, without attempting to enumerate all those contestible Topics or Lapses in Language which a curious, or, as I fear the Commissioners would deem it, a malevolent Industry might detect.

40. This Chapter appears to me to exemplify Vagueness and Uncertainty in Language, requiring much of Commentary and of Limitation before it can be safely acted upon, to contain many incorrect Positions, and some that are arbitrary and inconsistent.

Chapter I.
General Explanations.

41. I am unable to see clearly what is meant by or what is the Reason of the Limitation (Clause 3) of a joint Act to those specifically which are said to consist of Offences by "causing a certain Effect with a certain Intention, or with a Knowledge of certain Circumstances." I cannot see why (Clause 4) starving a Man to Death is considered no "Act," but an "*Omission*." I do not know what is meant by the "*Executive Government*" (Clause 9), as the Explanation of the Term "*Government of India*." I do not know if *Arbitrators* are meant to be included in Clause 12 as "*Judges*." I can hardly tell what existing Person may not be included within the Terms "*public Servant*" (Clause 14), if every Person in the List of "*Jury-men*" (Sixth), if Covenanters with Government by Charterparty (First), if Serjeants and Corporals (Eighth), if every "*Officer*," become such by having to expend anything or investigate anything on behalf of Government (Tenth), is so considered, and to be so considered though never appointed by Government, and though assuming such Office, and choosing to act in it, with whatever legal Defect there may be "*in his Right*" (Explanation). I do not know what Criterion of Evidence is meant in ascertaining "*Asiatic Blood*" by the Terms "*as far as can be discovered of pure Asiatic Extraction*" (Clause 32).

42. It appears to me an incorrect Position to include (as may be) Highway Robberies among "*Frauds*," as by "*causing wrongful Gain to one Party by means of wrongful Loss to another Party*" (Clauses 15, 16); so also to deny Possession "*of Property to Collections of Persons, or Firms, or Corporate Bodies*" (Clause 19); so also to apply the Term "*counterfeit*" to everything made

"made deceptively" to resemble another "Thing" (Clause 29), because it happens to apply to such Instances as base Coin.

43. It appears to me an arbitrary Definition of a "Document" to confine it to *Handwriting*; and it appears to me to be both arbitrary and inconsistent to attribute *Possession* to Cestuique Trusts and to Guardians of those Things which are put into a Wife's or Servant's Possession, in trust for the Husband or Master, or into Idiots Possession; as, suppose, for instance, these were so placed in their Possession without the Consent or Knowledge of the Husband, Master, or Guardian (Clauses 17, 18); so also it appears arbitrary and inconsistent to attribute to "*intelligent Consent*" (Clause 31) that Consent which may have been given under *Deception*.

44. I think I might increase this List of Defects in the First Chapter by bringing into aid verbal Criticism, or a contentious Examination of doubtful Points; but although Accuracy and Perspicuity may be almost necessary in a Code which the Commissioners desire should supersede Construction and Comment, I have no Desire to notice any other than Defects of so palpable a Kind as to suggest the Consideration of its Impracticability.

Chapter II.
Of Punishment.

45. There appear to my Mind many and gross Errors and Defects in this Chapter of Punishments; and in short I can scarce find One Clause in it not open to Objection.

46. The Fourth Class of Punishment, that of Banishment simply from the Company's Territories, appears to me almost impracticable. How it is to be enforced is not provided, and all Manner of Difficulties suggest themselves in devising Regulations for such Purpose. The Fifth Class of Punishment (for Forfeiture) seems to me also unequal, and, generally speaking, impracticable, even as respects existing Property at the Time of Conviction. It is almost a dead Letter in the English Criminal Law; but when Forfeiture is extended to all *future acquired* Property (Clause 49), its unjust Operation (could it operate at all) appears to me absolutely monstrous, and might be carried out to a Degree of Absurdity. The arbitrary Authority (Clause 42) to change Transportation for Life into Imprisonment for Life, which may be possibly *rigorous*, and which may be far the severer Punishment, is, in my Opinion, uncalled for, and may be unjust. I do not understand the Difference meant between Persons of Asiatic *Birth* and of Asiatic *Blood* (*both* of which Qualities are to *combine* to bring Parties under Clause 43), if a Person born of an Asiatic Father or Mother is of "Asiatic Blood" (Clause 32). But I think both Clause 43 and Clause 44,—under which, after Part of a Sentence of Imprisonment may have been endured by a Person not of Asiatic Birth or Blood, that Imprisonment may be arbitrarily changed to Transportation in some Cases, and to Banishment *for Life* in others, and that although possibly but a few Months of Imprisonment may have to be undergone, authorize the *Power* to confound and overthrow all Justice, Equality, and Humanity in Sentences.

47. The Clauses from 51 to 56 appear to me to teem with Difficulties and Perplexities in contemplating their practical Operation. Sentences of Death and of Transportation for Life, combined with *Fines*, seem anomalous. A System of *proportional* levying or receiving Fines and proportional Remissions of Punishment may have the Air of Fairness, but its Operation would be evaded, I imagine, even if practicable in some Cases.

48. The Doctrine of *Cumulative* Punishments in any Case I conceive to be unjust in Principle, and calculated to perplex, as the Illustration to Clause 60 may serve to indicate. I conceive the plain Law of One Punishment for One Offence, without breaking substantive Offences into separate Offences, is the best Law.

49. The last Clause, 61, appears to me, in point of Reason, the most objectionable to any. It provides for punishing Parties where either the Law or the Fact is so doubtful that the Judge cannot say what Offence has been committed. It appears to me that nothing short of the Acknowledgment that the Law itself may not be clearly intelligible, or that Cases may arise in which Parties ought to be punished as criminal, although no particular Criminality can be proved upon them, can account for such a Clause as this. The Illustrations of this Clause appear to me rather to expose than to accredit such a Principle of Legislation. And as regards the First, I cannot see how the Person *aiding* in a Murder (supposing he is present and acting in the Offence) is not guilty of murdering, by "*jointly causing that Effect*" (Clause 3), or what

what is the Reason of distinguishing between the murdering and the aiding under such Circumstances the Murder.

50. Independently of other Errors and Defects, as appear to me in this Chapter, those appear to abound which I mainly attribute to the Attempt at general and abstract Legislation.

Chapter III.
General Exceptions.

51. The first Clauses (62, 63.) appear to me to be compounded of a mere Truism and a Violation of the Rule "*Ignorantia juris neminem excusat.*" What is done under the direct Command of the Law can never indeed be an Offence; but that a Party should be clear of all Offence, from entertaining an *erroneous* Idea that he is commanded or authorized by Law to do it, lets in the Means of evading Responsibilities, and entails Inquiries into Dispositions, and Powers, and Attainments of the Mind unsusceptible of Proof. The Illustrations hardly appear to me even to apply, for they exemplify Mistakes of *Fact* rather than of Law. They may easily be matched, however, by others falling within the Text, in which, though the "Belief," or "Judgment exerted in good Faith," may be incontestible, the Guilt is no less so. Are all Persons who choose ignorantly or carelessly to take Expositions of the Law from those who employ them, or who *believe* they have *Power* by Law to do injurious and wicked Acts, to commit Offences, so made by the express Provisions of the Law, with Impunity? The Qualifications of Impunity, under "good Faith," "Belief," "Ignorance," "Intention," characterize the whole almost of this Chapter; and it seems to me evident that no Distinction has been heeded between Offences in which the Intention or Knowledge is a substantive Ingredient in the Crime, and those in which the Intention and Knowledge is to be presumed from the Quality of the Act itself.

52. The Clauses from 69 to 73 are, several of them, adapted to Cases the very Recital of which in the Illustrations is calculated to excite Ridicule, and yet they exonerate other Cases falling within such exceptive Clauses, which I imagine no one would wish so to be. An express Law for a Dentist to draw a willing Patient's Teeth, or for hurting in a voluntary Fencing Bout, or using a Friend's Paper and Wax or taking a Dip of his Ink without express Permission, or for a Parent's confining a perverse Child, or even for his having the Child cut for the Stone, and for various other Acts of a similar Quality, may perhaps meet with grave Consideration; but graver Doubts may be justified, if it shall be found that the same legal Provisions authorize Violations of the Peace in fighting, surgical Operations of the most dangerous Tendency by the most unqualified and ignorant Quacks, selling for Purposes of Prostitution, *killing* to prevent "Mischief" under some Circumstances, and *any Violence short of killing* to prevent "Mischief" of any Sort, &c.

53. As to those "General Exceptions" which exclude from Criminality certain Acts done in *private Defence*, a Host of Cases, as it appears to me, might be suggested, falling within the Text, which neither ought nor perhaps were intended to be included, and as many more Acts disallowed which are justifiable. Such Terms as Right of defending Body or Property against "Mischief" or "Criminal Trespass," are not indeed easy to be appreciated; and the whole Clause 75 is, with reference to the vast Variety of Cases which may possibly be pointed at, to me absolutely unintelligible. I know not how to make Clause 76 square with the Restrictions of Clause 75. Taking the Text of the Two together, Part of it may be read thus: A Female may defend herself against an Assault, *provided* she ascertains that the Assault is with a view to Rape, and provided she acts *under the Restrictions of Clause 75*, One of which is, that she must not inflict *more Harm than is necessary*. A Man may defend himself against an Assault, provided he ascertains that the Assault is with the Intention of confining him, and knows enough of the Code to be aware that the apprehended Confinement is an Offence punishable by more than a Year's Imprisonment, and provided also that the Assailant does not turn out to be a public Servant authorized, under Circumstances, to confine *some* Persons, though not the Party assailed.

54. It would be too tedious a Task to point out the Doubts and Difficulties and Incongruities which arise to my Mind in the Perusal of the various vague and general Expressions throughout this Chapter; and, as I have observed before, all the various Objections could not be stated without lengthened Disquisitions. The whole of this Chapter, however, appears to me to abound in such obvious Defects that I will venture to leave the greater Part of them to

the undirected Consideration of all such legal or judicial Critics whose Opinions it may be considered expedient to consult.

55. This Chapter appears to me to confound and perplex the English Criminal Law of *Principal and Accessories*, which Law I conceive to be very clear and rational. Those who *aid* and those who *conspire*, and who may *also* be *present* and substantially *co-operate* in the Act, I should think ought to all Intents be considered as the *Principals*, and not *Abettors*. That is not so enacted by *this* Chapter, though Clause 3 of the *First* Chapter enacts as much.

56. The concealing a *Design* to commit an Offence, knowing it *likely* that such Offence may be thereby facilitated, is an Offence, *though nothing be done*. It may be asked, What is "concealing?" Probably, "not disclosing" is meant. A Party not disclosing the *Design* of his Friend or Child to commit an Offence is himself criminally guilty, though he may afterwards prevent or dissuade that very Design from being effected. Luckily there is no Punishment awarded in the Code for concealing a Design not carried into effect.

57. It may be mentioned, as an Example of a very loose Style of Legislation, even in an Illustration, (though the Matter is comparatively trivial) that a Person is declared (Clause 87) to *steal* a Horse who takes him *fraudulently*, and if another *aids* him in that Act (say, by opening the Stable Door and leading the Horse out), he *abets* that *Theft*, but is not a *principal Thief*.

58. The various Shades and Varieties of Offence according to the *Means* adopted in aiding, instigating, or procuring (some of which exemplify refined Distinctions)—the cumulative and proportional Punishments,—appear to me calculated to excite endless Cavil and Difficulties, and some of the Clauses for these Objects egregiously to fall short or to go beyond their Mark. A Person "actually *delivering*" a Bribe (query, if a *Promissory Note* comes within the Definition,) to commit any Offence (Clause 90) not committed is not punished under this Clause for the *Bribery*, but for the *Instigation*. A Person "present and *instigating* to *persist*" in a Crime actually committed is punishable by Clause 88 with the whole Punishment of that Crime, and by Clause 93 by *One Fourth* of it; but what "instigating to persist" consists of is not explained. Persons exciting Eleven others to commit a Riot or "a riotous *Trespass*," and those exciting Eleven Soldiers to murder their Officers, are punishable by the same Punishment. But similar Excitements of Ten Persons only, do not (that I can find) appear punishable at all. The Conspiracy to commit an Offence, say Murder, is an Offence, though nothing is done; but there is no Punishment affixed. But if *any* Act is done "in order to" that Offence, but the *most trivial*, and the Conspirators renounce their Design, the same Punishment applies as though they had done Acts by which they had all but effected it. If Clause 97 is to be construed literally, a Person omitting a Part of his Duty, as by concealing a Design, or doing any Act with Intention to aid it, although he does not *in fact* aid the Design at all, may be punished as though he had aided in an Offence (say a Murder) designed and committed. The Illustrations are Cases of *actual Aid*, and not of Acts done merely *with Intention* of Aid; I presume, therefore, Abetment by doing an Act, or by illegal Omission of an Act, in *actual substantive Aid* of an Offence, is really meant. But I may say here, that throughout this Chapter the Vagueness and Uncertainty introduced by the Use of Expressions such as "Intention," "Misconception," "Acts in order to," "Knowledge of what is *likely*," "Knowledge of what is directed by Law," &c., can hardly fail to create Doubts and Varieties of Construction as to what is meant and what is required to be proved.

59. With every Effort to understand what the Distinction is between Clause 97, which applies to a Police Officer who *conceals*, by an illegal Omission to interfere, an Offence committing, intending to *facilitate* it, and Clause 101, which applies to another Police Officer (or "public Servant") who conceals and does not prevent, and thereby *previously abets* (which *abetting* is defined (Clause 86) a *Concealment* by which the doing a Thing is *facilitated*), I can discover no other than that under the latter Clause the Offender is to receive for the self-same Offence only One Half the Punishment he is to receive under the former Clause.

60. It is to my Mind totally impossible to reconcile with Consistency the Clauses 95, 97, 101, 102. By 102 the doing certain Acts, in concealing and
facilitating,

facilitating, in concert with others, the Commission of an Offence, is punishable with One Fourth of the Punishment which (as far as my Comprehension serves me) he would be liable to under Clauses 95 and 97. Much of the Difficulty and apparent Inconsistency may arise from the Obtuseness of my Faculties, or from their casuistical Acuteness; but really this Chapter seems calculated equally to puzzle the most stupid and most refined Reasoners.

61. The Clauses defining in the Abstract the Nature of "subsequent Abetments" apply to a great Number and perhaps the Majority of Cases detailed in the Illustrations. But so far from being applicable as *universal* Rules (for which Purpose alone they deserve Consideration), it appears to my Mind impossible to read One of them which could not be in the most obvious Manner falsified by other Cases than those specified by way of Illustration. Under some of these Clauses, Ignorance of the Law and Misconceptions of it form no Excuse; under others, Knowledge of the existing Law in reference to the Offences committed and abetted as clearly does form a substantive Ingredient, and Ignorance of that Law an Excuse. That Knowledge of the Law, too, required as the Criterion of Guilt or Innocence, has reference to *Details*, such as the Quantity of *Punishment* (for Instance) affixed to the Crime abetted.

62. I must, however, quit the Consideration of this Chapter with a similar Remark to what I have ventured on others. It is impossible to point out all the Instances of Vagueness and Uncertainty in Language, and the consequent Inconsistencies and practical Difficulties, without entering into long Disquisitions. At the same Time it does appear to me expedient that before a Code of this Importance in point of Object, and of such Extent as regards individual Topics, composed as it is without reference to Experience, and with but cursory Reference to existing Laws of any kind, should be brought into operation, every Clause will require to be well weighed and debated.

63. Some Observations I have ventured on as regards the Law of *abetting*, and the Punishment by Banishment, will of course apply to this Chapter where such Law is incorporated in its Clauses. It appears to me that the Law of High Treason, as expressed in the Statutes of England, in respect of levying War, &c., would, with a little Care in the Concentration of their Language, have more clearly defined the Offences intended to be created by the Clauses 109, 110, 111 of this Chapter; and I see no Reason why there should be Difference in the Language in prohibiting the *attempting by express Acts* and in prohibiting the *actual doing* the Offences respectively created by these Clauses. As regards the Object of defining the *Mode* of slandering Government, "as by Words *either* spoken or intended to be read, or *Signs*, &c.," and of defining what shall *constitute* slandering, namely, "the exciting *Feelings of Disaffection*," as contrasted with the exciting only Feelings of such a "Disapprobation of Measures of Government as is *compatible* with a *Disposition* to "render Obedience, and to support its *lawful* Authority against unlawful "Attempts," &c., I conceive the Composers of this Code are as unfortunate as all others have been in that Effort. Words *spoken*, and *Signs* made, and Words *written*, with a view to Sedition or of exciting Disaffection, are of very different Effect and Criminality; and the Vagueness in the Definition of Slander is such that no Two Persons would probably agree in their Sense of it. But the greatest Objection appears to me to be, the enormous Severity with which the most trivial Slander against Government, by the most trivial Sign of Communication, *may* be visited, extending, as it may, to Banishment for Life, *added* to unlimited Fine.

Chapter V.
Of Offences
against the State.

64. Clause 115, against "*using* the British Territories for the Purpose of "making *Preparations* to commit *Depredations* in Foreign Territories, or taking "refuge in the former after such Depredations in the latter," appears to me too vague; and it seems to me a strange Offence, that of *coming within a Jurisdiction* after committing some Criminal Outrage elsewhere.

65. I have but few Remarks to offer on this Chapter. All the Offences from Clauses 116 to 123 are by previous Abetment, through "Instigation, Conspiracy, or Aid." But why Abetments, by the 4th Species of previous Abetment, that by Concealment and consequent Facilitation, are omitted as Offences, I do not understand.

Chapter VI.
Offences relating
to the Army and
Navy.

66. The Clauses 121, 122, 123, and 124 all appear to me to apply to Cases falling within previous Clauses against abetting *Mutiny*; and Clauses 122 and 123 fall also within Clause 109, against the Treason of waging War.

67. Several of the Clauses of this Chapter appear to me to fall within the Remarks I have made in objection to previous Clauses, but it would be tedious to repeat them.

Chapter VII.
Offences against
public Tranquillity.

68. This Chapter appears to me in several respects uncertain and imperfect, of which I will submit Instances.

69. "Rioting" cannot be committed unless Persons *are aware* of the *Facts* making an Assembly "riotous and unlawful," as detailed in Clause 127, and *intentionally* join or continue in it. Now this Knowledge and Intention are very difficult to *prove*; and yet to make a Party liable under Clause 130 they would have to be proved; even though there be a Refusal to disperse after Proclamation, for it is only those who commit the Offence "rioting" (as above *defined and qualified*) who are punishable by Clause 130 for such Refusal. A simple going and continuing with a riotous Assembly after such a Proclamation is only punishable by One Month's Imprisonment or Fine, or both, by a different Clause, 136.

70. Under Clause 133 it appears that if a riotous Assembly have the Object of overawing the Government, and in pursuance of that common Object One of the Party commits Murder, the others engaged in this common Cause are only liable to the Punishment of Five Years Imprisonment and Fine. I leave it to the Judgment of others whether the English Law making this High Treason and Murder in all is not the more reasonable of the Two, even if the latter be too strictly severe.

71. I conceive that Clause 136 must always be a dead Letter, from the Impossibility of proving all the Ingredients of the Offence thereby defined. It seems to me a roundabout Way of making it an Offence to *excite* a Riot, suggested probably by the Idea of One very peculiar Mode very generally and vaguely expressed of exciting a Riot, that by "wounding Feelings" of any Class of Persons.

Chapter VIII.
Abuse of the Power
of public Servants.

72. I offer my humble Tribute to the substantial Merit of Clause 138; but I conceive Clause 139 is of a far too general Application. It may be very praiseworthy in a Party in some Instances to exercise personal Influence in obtaining a Favour for a Friend, such as an Appointment from an official Person. The Thing itself being so, the *Criminality* should hardly depend on the Meanness of the Motive. It may be very mean to accept of any *previous Hire* in any Case of this Kind; but a subsequent *Reward* may possibly be a mere Token of Gratitude, and such as there might not be even a Meanness in accepting. It is carrying the Principle of excluding all Shadow even of Corruption somewhat too far to visit such an Occurrence as a Crime punishable by Imprisonment.

73. It seems to me that the Offence under Clause 140, instead of being an *Abetment*, is *literally* an *acting as Principal*, and provided for by Clause 138.

74. I think the Punishment of Two Years Imprisonment and Fine for a Judge receiving a Bribe (for such is to be presumed from the Act specified in Clause 141) is far too lenient to reach some Cases.

75. Clause 142. Punishing a Judge for a Decision, "*knowing it unjust*," is too vague to be practicable, and very inexpedient, I think, to be attempted to be enforced; and the same may be said more forcibly of Clauses 143, 144, and 145. Such Punishments for *illegal Decisions* would let in all Sorts of vague and vindictive Charges.

76. Clause 146 incorporates in too general and vague Language a Variety of specific Crimes which may be construed to fall within it; and the Remedy (Clause 151) of making those specific Crimes punishable *cumulatively* appears to me but a Method of devising Two Punishments for One specific Offence.

77. Breaches of Contracts not to trade, or of public Duty in that respect, or in others, such as by *Disobedience* or *Insults* to Superiors, assuming the *Garb* of public Servants, for no Criminal Object, do not appear to me proper Objects of Criminal Law.

78. I cannot concur in the Reasoning of Note E by which the Criminality of giving Bribes is omitted from the Code. It assumes that the Administration

tion of Justice and of public Functions is so corrupt, that a Man cannot attain his fair Rights but by Bribery. If this be true, I do not think the End sanctifies the Means, and I conceive it a very inexpedient Principle to avow and act upon.

79. I must conclude my Remarks on this Chapter, saying that the Language of it is vague, and open to much Disputation. This indeed is more or less the Characteristic, in my Judgment, of every Chapter, and I shall not therefore repeat the Observation.

80. The Commissioners seem themselves to distrust the Policy of many of the Provisions of this Chapter, and they are conscious of the Need of some Modifications.

Chapter IX.
Contempts of the
lawful Authority
of public Servants

81. As regards the Variety of Instances,—some of them of a very petty Quality,—of obstructing public Officers in the Execution of their Duty, (as enumerated and provided against in Clauses 153, 161, 166, 168, 171, 173,) it might be enough to say that these Clauses display a needless and perplexing List of qualifying Circumstances, and of Gradations in Criminality, instead of a plain Denunciation of a substantive Offence. This Course of Legislation resembles that of the Chinese and ancient Hindoo Lawgivers, who make endless Gradations of this Nature, attempting to measure the Criminality and the proportionable Punishment; one Offence to strike with a thick Stick, and another to strike with a thin one, or with the Pist, and so on.

82. But these Clauses offend also, in common with almost all the others, in another respect of far greater Importance. A very little Reflection on the Purport of the various Clauses against Contempts of Courts and Officers must, I should imagine, convince most People of the almost unlimited Latitude afforded to arbitrary Constructions on this Species of Offence. Let reference be made to the Clause enumerating the various Classes of “public Servants,” rightfully or *wrongfully* claiming so to be, and then let the Effect of such a Clause as this following be considered, by which (vide Clause 182) “a Person *knowing* that by a *local* Order promulgated by a *public Servant lawfully* empowered to promulgate it he is directed to *take certain* Order with certain *Property* in his Possession, and disobeying such Direction, which Disobedience *tends* to cause *any* Risk of any Annoyance to Persons *lawfully* employed, &c. &c., shall be punishable by Imprisonment, &c.” Again, “A Person *legally* bound to attend in Person or *by* Agent at a certain Time or Place in obedience to an Order from any public Servant *legally* competent to issue it, who omits so to attend, (the Illustration says, ‘bound by Sub-pœna to *appear* before the Supreme Court,’) shall be punished by Imprisonment,” &c. By other Clauses the “absconding” to avoid Service of a Notice by any public Servant, the not “furnishing *Information*” which a Party is “*legally bound* to furnish,” the Bidding at a Sale ordered “by the *lawful* Authority of *any* public Servant, not intending to *perform* the *Obligations* under which the Party *lays himself* by such Bidding,” are all punishable by Imprisonment. Other Clauses of a similar Quality might be quoted.

83. Now it appears to me that under such Clauses as these a Number of Acts may be ranged as Offences punishable by Imprisonment which I can hardly suppose to have been intended to be visited as Crimes at all. It may be asked if letting Judgments go by Default, by not appearing by Attorney or in Person to answer to a Bill in Equity, or to plead to an Action at Law, is a Crime. It may be asked, What is *absconding* to avoid Process? Is a Debtor turned into a Criminal for keeping out of the way of Arrest, or out of the way of even any Notice by any public Servant, by whatever Means? What is the Criterion of Bidding “without *Intention of performing all the Obligations*,” &c.? To proceed in multiplying such Instances would be endless. But I must confess I cannot myself understand Clause 182, which I have above in part quoted. It seems to me hard to say, having regard to the many qualifying Circumstances abounding in all the Clauses of this Chapter, and the Vagueness of the general Terms in which they are expressed, whether it is most difficult to include or to exclude any Conduct whatever towards public Functionaries within one or other of these Provisions to repress Contempts against them, or those who may be *construed* to be such. All seems Matter of arbitrary Construction, to be drawn in many Instances by the public Servants themselves who may think their Authority contained.

64. Double or cumulative Punishments for the same Act. and also more in this Chapter (where I conceive there is the least Place for them) than in any other.

Chapter X.
Offences against
public Justice.

85. I have little to say upon this Chapter. I agree in the Expediency of the Clauses against "*fabricating* false Evidence," and its logical Distinction from "*giving* false Evidence." I conceive, however, that Clauses 193, 194, making it criminal to "*conceal*," or claim with a Knowledge of "*having no rightful Claim*," Property, for the Purpose of preventing its Seizure for a Fine, are scarcely calculated for *fair* Application, from their Uncertainty of the Cases falling within such Terms; but they are open at the same Time to great Abuse, by *unfair* Application. The Principle seems borrowed from the Bankrupt and Insolvent Laws; but I think there is much Difference in the *Duty* of Bankrupts to *disclose* and surrender and the *Obligations* of Culprits to *submit* to a Sentence to be *enforced* by others. The making it criminal to sue *without probable Cause* (which is the Effect of Clause 196) labours under the same Objection; and I conceive it very inexpedient to punish such Conduct as a *Crime*, as particularly by so severe a possible Punishment as One Year's Imprisonment. The Policy of rendering mere *Threats*, with a view to prevent Civil Proceedings, criminal,* is to my Mind very questionable; always presuming that Redress against any *serious Threats of bodily Harm* is open to Parties; but if, with reference to the peculiar Habits of the Natives, such Threats are to be repressed by rendering them *criminal*, and entailing the possible Punishment of Two Years Imprisonment, I decidedly think that such Criminality and such Measure of Punishment has too general and uncertain Application, in including "*any Threat of any Injury*."

86. I omit further Observations which occur to me in objection to some other Clauses, as I do not aim at that full Discussion of all Parts of the Code which I nevertheless think is requisite before it should be finally adopted.

Chapter XI.
Offences relating
to the Revenue.

87. If any Part of this Chapter be allowed to be brought into operation, I conceive much Amendment must be made in the Phraseology of most of the Clauses. I will select a few Instances, among more, that might be mentioned.

88. The Words (Clause 210), "*having Implements in possession, in order to the doing*" a Thing, (meaning, it seems, for the *Purpose* of doing,) the "*being bound by Law to put a Mark*," &c., "*and omitting*," &c. (the Word *intentionally*, which happens *here* to be the *Essence* of the Offence, not inserted); the "*having any Implement in possession knowing it likely it may be used*" for the Purpose prohibited; the "*maintaining any illegal Post for conveying Letters*," or "*intentionally*" (here that unnecessary Word *is* inserted) "*omitting to deliver a Letter, being legally bound to deliver it, to*," &c., the "*disobeying any Direction of Law, or any Condition imposed by the lawful Authority of a public Servant*;" all these Provisions are susceptible of the most absurd Applications, if construed literally or strictly; and how and under what Limitations and Restrictions they are to be construed is not explained.

89. This Imperfection, together with others of much more serious Import, arises, as it appears to me, from the Effort to place a vast Variety of Breaches of the Revenue Laws under the Jurisdiction of a few short and general Provisions denouncing their Criminality. Where such Provisions can, by the fair Import of the Law and Usage, apply at all, I conceive a Multitude of Cases may arise not properly to be visited as Crimes, particularly if punishable by Imprisonment, and yet such Cases are punishable doubly, as well by Confiscation of Goods improperly dealt with under *other* Fiscal Laws as by this; and thus there are *Two* Laws enacted to meet adequately One specific Offence which I consider not properly punishable as a Crime. Again, many Cases may fall within these general Provisions, and these *only*, which appear to me to be punished far too leniently. The just and only efficient Course appears to me to be, to make specific Enactments for specific Breaches of the Revenue Laws. Some may be highly criminal; some may be better visitable by Mulet. Almost all take their Character from the Subject Matter and peculiar Circumstances.

90. It appears to me a remarkable Thing that the most *specific* of the Offences under this Chapter are those which in my Construction fall distinctly within another more serious Species of Criminality, namely, Forgery, or uttering Forgeries. Thus, the executing "*Part of the Process*" of counterfeiting a Government Stamp (Clause 217),—the "*selling any Stamp knowing it counterfeit*,"

220,—the “using it with like Knowledge,” 222,—the “effacing the Writing of a stamped Document” for the Purpose of using the Stamp for another Document, 223,—the “using a Stamp used before for a different Writing,” are all Specimens of Forgery or uttering of Forgeries, and some of them of a very atrocious Quality, and yet the severest Punishment for some of the worst of these Crimes is but a few Months Imprisonment; and it is worthy of Notice that *these* are among the Offences which are *not* to be visited by a double Punishment.

91. This Chapter appears to me to be occupied in detailing and denouncing, in similar defective and uncertain Language, the various *Methods* and Circumstances of counterfeiting or tampering with current Coin, and of knowingly uttering, or having in possession with Intent to utter, various Kinds of counterfeit Coin. In this Effort at specific Legislation according to the estimated Shades of Guilt it appears to me that Simplicity and Perspicuity are sacrificed for the sake of Distinctions not properly falling within the Province of positive Laws, and indeed of Distinctions not always according to my Ideas correct. Scarce any imaginable Crime can be committed which has not its different Shades and Characteristics of Guilt; and I conceive that after the specific substantive Crime is defined and denounced, there the Enactment should stop. The Distinction between the counterfeiting, &c. Coins of the *Government* and Coins which are *current* of other Denominations, does not appear to me to be sound. That between forging of Foreign and Home *negociable* Paper does not obtain in England or elsewhere. The Reason of the greater Criminality of counterfeiting the *King's* Coin (noticed in Note I) I imagine to be founded on its partaking (in false Notions) of that of High Treason. Neither do I think the Reasoning sound of fixing the Proof of the *Object* and *Intent* to utter on the Prosecutor, in Cases where numerous counterfeit Coins are found in the Possession of a Party. The *Knowledge* and Intent of uttering counterfeit Coin, where the *actual* uttering takes place, may be required in substantive Proof, because the Acts done and the Circumstances of it are extant on which a Judgment can be formed; but where *no Act* is done at all, there is scarce a Possibility of proving any secret Object and Intent, though frequently suspicious Circumstances are, in such a Case as this, a legitimate Ground for a Party to prove, what he alone can prove, the lawful Excuse, or account for such Possession of *numerous* Articles of base Coin; and such is the Principle of the English Criminal Law on this and other similar Subject Matter, had it been thought worth the Inquiry to ascertain it.

Chapter XII.
Offences relating
to Coin.

92. There are Redundancies of Language in this Chapter from which Misconceptions may possibly arise; such as “*fraudulently* using Weights *known* to be *false*.” I conceive, too, that it would be enough to show Guilt that a *Dealer* was in possession of a false Balance, or Measure, Weight, without further Evidence of “his *intending* to use them *fraudulently*,” which it would generally be impossible to prove. I am unable to say whether it is meant by using the Word “*dealing*” rather than *selling*, that *all* Persons *using* in *any Manner* false Weights, &c., are to be brought within this Chapter.

Chapter XIII
Offences relating
to Weights and
Measures.

93. Of this Chapter I shall take the liberty of remarking that the Words “*knowing*” and “*knowingly*” seem to be used indiscriminately, and without any ruling Principle. The Consequence appears to me to be, that the “*knowing* a Rule for Quarantine,” &c., “made according to Law,” and “*knowing* an Act done is likely to spread an infectious Disease,” is inserted where it had better have been spared, as I conceive the *doing* such an Act, and Breach of any plain Notice of Quarantine, are substantive Offences, without a Call for Proof of such Knowledge, and, on the other hand, this Proviso in other Cases is omitted where it appears to me the guilty Knowledge is of the substantive Essence of the Crime; for I imagine that the Adulteration of Food or Drugs can hardly be criminal unless shown to have been of wilful Knowledge.

Chapter XIV
Offences affecting
the public Health,
Safety, and Con-
venience.

94. As regards those criminal Acts, such as driving violently, negligently, using Fire or combustible Matter, leaving Buildings in a dangerous State, the Criminality of which is made to depend on “Want of Regard to Human Life,” it appears to me, that such Want of Regard is hardly capable of Proof, except from the Result; at the same Time other Acts, such as “rash and negligent dispensing poisonous Substances,” are such as by their inherent Nature indicate such Want. The mere doing of such Acts I consider to be

Offences of a greater or lesser Shade, and if actual Death does follow, the Offence of course becomes of a different Quality.

95. I have before remarked on that extraordinary Characteristic of some of the Offences enumerated in this Chapter, as depending on the Party's "Belief."

Chapter XV.
Offences relating
to Religion and
Caste.

96. It will ever be a Matter of Controversy to what *Extent* and *Religion* like that of the Mahomedans or Hindoos should be protected by English Law; and this very Chapter, while it upholds under severe Penalties some absurd Superstitions, discountenances others. Some indeed denounce every Species of legal Protection; others would go as far as they dared in overthrowing such Religions. I shall be content to express my Opinion that to *some Extent* the Protection of the Law ought to be afforded, beyond the common Protection afforded to Person and Property.

97. But I am at a loss to understand how any Offence whatever can be committed against any Religion except by One of these Three Ways, by *Defilement* of any Structure or Substance, by Obstruction or *Disturbance* of any religious Faith or Ceremonies, or by *Slander* of the same.

98. Instead, however, of what I should conceive might easily be phrased,—a short and plain Provision against these Three specific Offences,—the Language of this Chapter appears to me to be calculated to render the Protection and Deference shown to the Faith or Superstitions of the People a Matter of Ridicule, and to introduce the most arbitrary Constructions of religious Offences. I know not how to construe Acts as "wounding religious or other "Feelings," and "insulting Religion." It is impossible to say to what Absurdities the Criminality of "uttering any Word or Sound, or making any "Gesture, in Hearing or Sight of a Person, with the Intention of wounding his "religious Feelings" (Clause 282) may be carried out. But Clause 283 is no less than a legislative Illustration of an old Jest, that if a Man twirled his Hat on the Top of a Stick, and cried "Buz," with a view to a superstitious Effect on a Clown, he would commit a Crime.

99. Surely it may be enough to protect religious Faith and Ceremonies by repressing the ordinary Outrages against them, without attempting to put down One Species of superstitious Imposture, such as sitting a Dhurna, or Conjuring, by visiting it as a Crime, for the Purpose of *accrediting another*, under which a weak ignorant Mind is induced to give way to such Imposture; and upon the same Principle I conceive the real Interests of the People are better consulted in omitting from a Criminal Code the temporal Protection of Superstitions, even in regard to the Preservation of Caste, and in leaving pernicious Prejudices to clear away as Civilization advances. A contrary Course, as it appears to me, would have greater Operation in encouraging and perpetuating them than in repressing what is pernicious.

Chapter XVI.
Illegal Entrance
into and Residence
in the Territories
of the East India
Company.

100. The First Clause of this Chapter (287) is decidedly too general in its Language to be safely acted upon. *How soon* a Person is to register his Arrival by Sea;—in what Manner he is to "make it known;"—what is meant by "his Destination" or "his Object of Pursuit," is left altogether uncertain. If all is to be left to mere *Discretion* in the Construction of this Law, it is One which hardly deserves the Name.

Chapter XVII.
Offences relating
to the Press.

101. I have already observed at some Length on the Subject of this Chapter In conjunction with Act No. XI. of 1835, there are Two Laws for one and the selfsame Object, and both equally defective in point of Certainty.

Chapter XVIII.
Offences affecting
the Human Body.

102. Upon the important Subject of this Chapter I should have much to write were I to attempt such a Critique upon its Provisions as my Impressions on their Quality dictate, or to give that full Consideration which is due to the Object of them. Under any Circumstances this would be as useless, probably, as it would be a wearisome Task. When a Body of experienced Persons are intrusted with the Undertaking of drawing up a whole Code of Provisions upon an extensive and important Department in the Administration of Justice, the Achievement, when accomplished, must, as a general Measure, be taken on Trust, or discarded on its Self-indication of Insufficiency. The Suggestion of partial Amendments, and the Enumeration of casual Defects, may deserve and meet with just Attention, so long as the Principles, the Frame, and constituent Materials of the Composition are respected; but it is a vain Thing to aim at its Exposure, or its Amendment as a whole, by a critical Disquisition on each of its various Clauses, drawn from a Hundred different Sources. My Object must be, therefore, in respect of this Chapter

with regard to the whole Work, to explain my Impressions of its inherent Quality throughout. Any Amendments or any Defects I can suggest must be considered but as Instances, and my Observations have but One Tendency,—that of suggesting the Abandonment or the Adoption of the Code altogether.

103. There is, in my Opinion, much in this Chapter calculated to assist an Effort, as feasible as meritorious, that of a sound and distinctive Digest of the various Crimes of wilful Injury to the Person; at the same Time I am compelled to the Opinion that this Effort has been too ill-accomplished by the present Chapter to admit of its being brought into practical Operation.

104. It appears to me impossible to read as far as this Chapter without suspecting that the Commissioners have some peculiar Object in distinguishing on so many Occasions between the doing an Act “with an Intention” to effect a certain Result, and the doing it “with a *Knowledge* that it is *likely*” to produce that Result. Now there appears to me an Error in Principle in legislating on any such Distinction; and I mention it the more pointedly at this Opportunity because I think the present Chapter will afford more than One Instance of the Uncertainty and even of the Absurdity which may arise from the Applications of such a distinguishing Doctrine. The Principle of English Law (not badly illustrated by a Distich in Hudibras, which I need not quote,) is, that a Man’s Intentions and Designs are to be judged of by the Quality of the Act done, and that he shall be *presumed* to have intended that which his Act was naturally likely or calculated to effect. But if the Commissioners Distinction above noted is really intended, and is to prevail in estimating the substantive Quality of an Act, it will follow that a Man is to be supposed capable of designing a Thing by means not at all likely, and which he knows not to be likely, to effect it; or, on the other hand, he is to be supposed capable of doing a Thing which he knows to be likely to cause a certain Effect, and at the same Time not to intend that Result.

105. An Illustration appended to this very subtle Text, separating the *Intention* in the Act from One of the strongest *Evidences* of that Intention, the *Knowledge of its likely Effect*, does however seem to indicate some Notion of a Distinction of this Kind, and at the same Time exemplifies the absurd Extent to which its Application may be carried. It is stated as an Instance of “voluntary culpable Homicide (amounting to *Murder*) if a “Person relates *agitating* Tidings to another, who is in a *critical* Stage of a “*dangerous* Disease, intending to cause his Death, and he dies in *consequence*.” The Imagination must have been somewhat taxed to devise such a Species of Murder, which is taken, however, as a principal Case, by way of Illustration. This is a Method of murdering which I believe under no Combination of Circumstances ever did or ever will enter into any Man’s *Design*. Equally improbable does it appear to me that a Person should be possessed of all that Knowledge which would fix the Guilt of Murder on the Act of communicating certain Tidings to a sick Person. If this Illustration affords a Specimen of the Nature of the Inquiries which such a Course of Legislation entails, it appears to me almost unnecessary to expose the puzzling Uncertainty of ascertaining such Data as *agitating* Tidings communicated at a *critical* Stage of a Disease which is *dangerous*, in order to prove either that such Tidings were in fact *likely* to cause Death, or that the Party relating them knew them to be so, or that, not knowing they were likely, he did nevertheless intend thereby to cause the Death.

106. I pass by other Topics open to Observation to notice the Construction given to Death caused by a Party who in a sudden Affray, and in Resentment of a Blow, kills his Antagonist. This is construed *Murder*, in case the Blow resented was given in Self-defence following upon an Assault by the Killer. Now this Construction of Guilt depending on who was the First actual personal Aggressor, and not on the Suddenness and Heat of the Affray, is quite as contrary to Principle, in my Opinion, as it is to the English Law; for the actual First Aggression may have been slight, and the Provocation to it great, and the Continuance of the Affray, and the Heat and Danger to the Killer arising out of it, imminent and engrossing. It seems to me irreconcilable to Justice and Humanity to construe the Death so occasioned a *Murder*, and “not a Manslaughter.” On the whole Case the Aggressor *may* have been the least to blame of the Combatants; and the Nature of the Case excludes the Idea of any deliberate Design of killing. It is clear that the

Commissioners have not adverted to the Doctrines and Principles of the English Law of Self-defence.

107. I had imagined that the Clause 298 was devised with a view mainly of punishing *Duels* with a mitigated Sentence, and for distinguishing Deaths by such a deliberate Act from *Murders*. I was disposed, under that Impression, to intimate my Concurrence, but neither in the Illustration nor in the Notes is any such Object alluded to; and the only Application of the Clause seems to me to be to Cases of extraordinary local Superstitions (better legislated upon specifically), or to those which are almost or purely imaginary. The Clause in this View appears to me unnecessary, and liable to Ridicule.

108. With every Effort to understand Clause 299, turning back to the Clauses therein referred to, and then Explanations and Illustrations, applying the Illustrations subjoined, and consulting the Notes in this Clause, which form no constituent Part of the Code, I am obliged to give it up in despair. The Commissioners consider the Right of Self-defence, and of Deaths inflicted under such Right, as complicated and obscure by such existing Laws as they have referred to. Probably they mean the English Law. The Lines of Separation of the various Shades of Guilt or of Justification may be narrow; but I conceive by the English Law they are clear and well-founded on Principle; and judging by the Cases of Illustration stated in this Code, this Law is indeed very different from that Law. In whatever State the Commissioners may have conceived they found the Criminal Law upon this Subject, it is acknowledged by themselves that they have *left it* in an unsatisfactory, complicated, and obscure Condition, by the very Code which aimed at superior and singular Precision. If I were to judge from my own Capacity, I should doubt whether this Portion of the Code was even intelligible to any Class.

109. Clause 304. Assigning Punishment to Deaths caused by Rashness and Negligence I consider to be just and expedient; but I am quite unable to reconcile it with Clauses 69 to 72; and when I find, under the next Clause and its Illustration, that *killing in the Attempt to commit a Rape* is a Specimen of this *rash* or *negligent* Way of killing, and that such Offence (with certain Exceptions) is to be punished as a Combination of Two Offences, and either to be doubly punished, or punished by Substitution of the Punishment attached to the Commission of the Crime attempted, I am lost in Confusion and Uncertainty. I have equal Difficulty in learning what the Law is, and how to apply it.

110. The same Confusion and Uncertainty appears to me to be carried into subsequent Clauses, 308, 309, unnecessarily (as I conceive) detailing the ingredient Circumstances of the Crime of *attempting* to murder, and to commit a voluntary culpable Homicide; and I shall add, as regards almost the whole Code upon Homicide, that the Commissioners seem for the most part occupied in considering subtle Casuistries and imaginary Possibilities in the Modes of committing that Offence, and in legislating specifically with a view to those *incidental Circumstances* of Guilt.

111. The Remainder of this Chapter is open, in my Opinion, in many Instances, to similar Imputations. The Attempt at minute Distinctions of every Variety and Characteristic in personal Injuries must necessarily lead to Confusion and Uncertainty. I certainly concur in the Definitions of what shall be "grievous Hurt," and in the Expediency of making them; and a few simple Qualities of that Offence might (as under the recent Statutes) be specifically defined and especially provided against. Some few Offences of a peculiar and local Description might also need similar Provisions; but when abstract Rules of Qualification of all Sorts of Offences against the Person, by Assault or Imprisonment, or by other Injury, only to be understood and applied by Reference to Explanations and Illustrations, shall be attempted to be put in practical Operation, I can surmise all Sorts of Difficulties and Misconceptions and arbitrary Constructions as likely to arise. These Offences appear to me to be over-legislated upon. Nothing is left to Discretion, except the Construction of the Law; and the Language of that is too vague and full of Qualifications ever to be distinctly understood. I might expend Pages in exhibiting Instances, and in so doing might be led away by a Temptation to ridicule.

112. If a Definition of *Theft* according to the English Law was attempted I believe it might be fully and clearly accomplished at Half the Length of

they reached in Clause 323; and I am inclined to think that under such a Definition few of those explanations and Illustrations appended would be necessary to convey a just Understanding of the Nature of that Crime.

113. I conceive that such a Definition might run thus, "whoever without Colour of Right moves any Thing unattached to the Earth without the Consent of the Possessor thereof, and intending its Appropriation, commits

114. Whether such Definition of what is or ought to be *Theft* be clearer than that in the Code, or whether it be more or less comprehensive than it ought to be, or than that in the Code, I shall not argue; but it appears to me at all events that the Ingredient of the Crime expressed by the Terms "whoever *intending* to take *fraudulently* a Thing which is *Property* moves that Thing in order to such taking" vague enough to lead to various Constructions, and to various Difficulties in the Way of Proof. The "*moving* any Thing *attached to the Earth* in order to such taking," and the mere "*severing it from the Earth*," are distinguished, the latter being "a Theft," and the former not; but that Distinction seems to me peculiarly subtle, to say the least of it.

115. The Explanations to this Clause appear to me to be altogether unnecessary, and I feel compelled to say that many of them appear to me to be puerile, and leading to Illustrations still more puerile and unnecessary. It surely cannot be necessary to explain that inducing a Horse to carry a Rider off is moving that Horse, or that a Person intending to steal Liquor moves it as soon as he "pulls out the Bung," and causes the Liquor to flow. Some of the Illustrations of Theft so construed in consequence of *fraudulent Means*, and *ulterior fraudulent Objects*, in taking Property, seem to exemplify Cases hardly allied to the common Notion of *stealing*, and serve, in my Opinion, to involve the Meaning of the Terms in the Text of "*intending to take fraudulently*" in inextricable Doubt. For instance, the *using a prize Pine Apple* belonging to another Person, for the Purpose of fraudulently obtaining the Prize, is construed a stealing of the *Pine Apple*.

116. In proceeding through the Clauses of this Chapter I can scarce find One that in my Opinion does not exemplify similar and often greater Defects. I believe it will be vain to seek the Distinction intended between "Extortion" and "Robbery," each Offence consisting (at least in many Instances) in the putting in fear of personal Injury, and thereby accomplishing a Theft. The Introduction of the Word "*fraudulently*" becomes more puzzling in the Clauses of this Chapter than in any previous; sometimes apparently applying to the *Manner* of doing the Act, and sometimes to the *Object*; so that *fraudulently* taking Property is occasionally made to apply to the *extorting it by open Violence*. It is quite impossible to calculate the Limits to which arbitrary Construction may carry the Provision of Clause 383, making it a Crime "*fraudulently* to take into a Party's Possession Property in no Person's Possession," except he may be altogether ignorant of the superior Claims of another Person, or of the Means of discovering him. It seems to me One of those Clauses suggested by the specific Cases exemplified in the Illustrations to the Clause.

117. The *general Language* employed in Clause 386 renders it impossible to distinguish between some Cases of Theft and those which under this Clause are denominated "Criminal Breaches of Trust." "A Butler intrusted with Plate, who fraudulently runs away with it without his Master's Consent," which is an Illustration of *Theft* under (Clause 363), is to all Intents and Language a Person who being "intrusted with the keeping of Property, and "intending fraudulently to cause wrongful Loss, violates an implied Contract made touching the Discharge of his Trust with the Party from whom he derived such Trust," which is the distinguishing Definition of Criminal Breach of Trust.

118. Few, I believe, will concede to the Propriety of considering all Property which may have been "fraudulently taken into possession from no Person's Possession" (except he may be ignorant of any other Person's superior Claim) as "*stolen Property*" (Clause 383), under whatever Circumstances so fraudulently taken into possession. The same may be said in reference to the Clause (392), against "*Cheating*," which is defined to be "*the intentionally deceiving any Person*," and "thereby fraudulently inducing

that Person to deliver any Property to any Person. A. many in the illegal Acts may be brought within the Vortex of this Text, in the Sense criminal. I cannot devise a genuine Reason for departing from the plain Text of the English Law against "obtaining Property by false Pretences," and preferring so vague and complicated a Clause as this (392). The Illustrations in most Instances are Cases of Deception in regard to the Party's future Intentions, which are of course incapable of Proof, and are many of them of a Quality so little allied to Criminality as to excite Ridicule, such as Cheating by obtaining Money under a *deceptive Promise to repay it*. I must say again, that some of the Illustrations to this Clause serve to my Apprehension only to render the Meaning of the Text more obscure.

119. The extending Criminality to Acts of "Mischief" not involving *other* specific Crimes can only be defended, in my Opinion, on the Principle of making every Species of private civil Injury a public Crime; and the Punishment for this Species of Offence appears to me to be out of all Reason severe. I shall be content with stating Two Examples, comprising both Objections. Clause 405 enacts to the possible Extent of rigorous Imprisonment for Two Years for committing any "Mischief" (which may be by "diminishing" the Value of any Property, intending to cause wrongful Loss to any Party,) with the deliberate "*Intention of annoying* the Person to whom the Person to whom the wrongful Loss is *intended*." Clause 408 enacts to the possible Extent of like Imprisonment for "an *Attempt* to commit Mischief on any Road, *intending* to render it *less easy* to travel by it." Such, however, is the wide Scope of this Offence of doing "Mischief," that it includes also *Arson* and *scuttling* of Ships.

120. As to the Article of "Criminal Trespass" consisting in the "exercising Dominion over Property" (whether Real or Personal does not appear) without "any Right or Permission to the *annoying*" (among other Modes of so dealing with such Property) "of the Possession of it," I must say I know not what is meant by *Dominion*, or what is meant by *annoying*. The Illustrations show some Cases to which those Terms are intended to apply; but what are the others? Can *Dominion* be exercised without any actual meddling with or personal Ingress upon Property, as by making Sale of it, for instance? Can a Person be said to be *annoyed* by any mental Vexation reasonably surmised? And does the Text apply to *such* Cases? It may serve, however, in the most legitimate Manner to show to what Extent of Construction "Criminal Trespass" may be pushed, by exemplifying from the Code itself some particular Act of it, and the possible Punishment prescribed. A Person who, without any actual legal Right or Permission, shall enter into any Dwelling secretly, may be punished by rigorous Imprisonment for Two Years, although no Act be done, if it shall appear that he intended *some Annoyance* to any Party exercising *Dominion* over that Dwelling; and any Party, even entering a *Field*, or "taking up a Book," in the same Way and with such Intention, may be sentenced to One Month's rigorous Imprisonment or Fine of 500 Rupees. Surely this seems to be confounding Crimes and Civil Injuries.

121. I have not omitted to give Attention to the copious Explanations and Reasonings in the Note to this Chapter. I need not say they do not satisfy me as to the necessary Causes of acknowledged Defects, or as to the Merit of those Clauses, for which Credit is taken; but it would be impossible to reduce any Attempt at Refutation within a short Compass. I must say, generally, that the Difficulties expatiated upon in legislating for the Protection of Property against Criminal Abstraction or Injury, for Want of a previous Code, or a completer existing System of Law regulating *Civil Rights* in regard to Property, appear to me chimerical. The Rules of English Law, where referred to, appear to me to be misconceived.

Chapter XXI.
Offences relating
to Property Marks.

122. Of this Chapter, to which I have to offer no very material Objection, I shall merely say, that, agreeing in the Expediency of extending Criminality to the counterfeiting private Marks on private Property, even though no Fraud may be thereby actually effected; yet it appears to me that the "*using*" such Counterfeits as genuine, knowing it *likely* or *intending* that Injury may be effected thereby, or "for the *Purpose* of cheating," is more open to doubtful Construction and other Objections than the plain Law against the *obtaining* Money or Goods by false Tokens or Pretences.

123. This whole Chapter appears to me so obviously open on the very Face of it to every Species of Objection arising from Uncertainty of Meaning and Application, to say nothing of its utter Inexpediency on Principle, that I do not feel Occasion to expend much Observation upon it. It appears to me to be a Law whose Operation depends altogether upon Proof of the *Belief* and *secret* and *future Intentions* of a Party whose Act in *itself* gives no Proof or Indication of what such Belief or Intention or Object may be. If a Man takes Property under Circumstances proved, which show he did so under *Colour* or in Assertion of *Right*, I should suppose that under any Law but this he would be guiltless of *Crime*; but under this Law the Question of Criminality in taking the Property under these Circumstances is made to depend on what he may *happen afterwards* to do with it, or rather upon *what Intentions* he may be supposed to have, or subsequently to form, about the Property. So, on the other hand, if he clearly takes the Property *without any Colour of Right* whatever, yet the Criminality of the Act is under this Law made to depend on the Result of some Inquiry or of some Impression on the Part of those who try him as to what he *intended* at the Time to do with the Property, and even upon the Intention he may subsequently conceive.

Chapter XXII.
Illegal Pursuit of
legal Rights.

124. There may be no sound Objection to the rendering *some* Sorts of Breaches of *some* Sorts of Contracts of Service criminal; but I conceive those particular Breaches of Service should be specially designated, and that a Law making *all* Sorts of Breaches of Contracts to *convey* Persons or Property,—all Sorts of illegal *Disobedience*, or leaving of a Vessel by a *Seaman*,—all Sorts of Omission in Attendance or *supplying Wants of helpless Persons* by their Servants, criminal, and punishable by various Degrees of Imprisonment or Fine, or both, is carried to a preposterous Extent.

Chapter XXIII.
Criminal Breach of
Contracts of Ser-
vice.

125. Upon this Chapter much public Abuse has been expended, and presuming the Text, under the Terms “by *Deceit*” causing Parties respectively to *believe* that they are married to each other when they are not so, and under the Terms “*with any fraudulent Intention* going through the *Ceremony*” of an illegal Marriage, is to be understood as applicable to Bigamy, committed by Europeans at all events, as well as to other unlawful or deceptive Modes of Marriage, I am of opinion that such an express Limitation of the Criminality is impolitic, and the more so because it appears to me unnecessary. I can hardly conceive the Possibility of any such Crime as Bigamy without some “*Deceit*” and some fraudulent “*Intention*.”

Chapter XXIV.
Offences relating
to Marriage.

126. But a more practical Objection lies in the extreme Uncertainty of the Language, which, in my Opinion, disqualifies this Law from safe and just Operation. It is hard to say to what unlawful Marriages it may apply, besides those characterized as Bigamies or unlawful Polygamies. It is still more difficult to understand the Extent of Meaning in the Words “by *Deceit*” causing a Party to “*believe*,” and with fraudulent Intention going “*through the Ceremony of being married*.”

127. As my Object is not so much to discuss the *Principles* of the Laws themselves contained in this Code as those upon which the *Composition* of the Code has been accomplished, and the Imperfection of its Details, I shall avoid any lengthened Discussion of the Principles of Law on which this Chapter of Defamation is founded.

Chapter XXV
Of Defamation.

128. My Notion of the Characteristics of *Crime*, however, differs from that of the Commissioners, and out of that Difference mainly arises my Objection to the Principles of Law upon which they enact this particular Species of Criminality by Defamation.

129. I conceive that the true Characteristic of *Crime* is its public Injuriousness, combined (in most Cases) with the Difficulty or Impossibility of enforcing personal Redress from the Criminal to the injured Party. Where the Injury which is done merely affects a private Individual, and Compensation may be estimated and is attainable by Course of Law, it appears to me that such Injury is properly classified as a Civil Wrong, and not as a Crime.

130. Defamation in most People's Estimate will, I believe, be considered purely as a Civil Wrong, when directed against Individuals, except in so much as its Tendency may be to create open Commotion or Violence from the Irritation thereby created. Those who do not concede any such Tendency, or conceding it doubt (as the Commissioners do) the Propriety of such Tendency being considered a Criterion of Criminality, would find it difficult to assign a

sound Reason for distinguishing an Injury done by personal Defamation from any other Civil Injury.

131. Those who rest their Opinion of the Criminality of libelling on the Tendency I refer to, and who conceive that no One should be allowed to take the Law into his own Hands in punishing the undeserving, by holding him up to public Shame, but should be obliged to seek public or private Redress against the Party libelled according to the Law, have, to my Mind, a legitimate Justification in assuming that the *Truth* of the Charges is no Excuse for the *Criminality*, which depends on other and different Data. But when the Commissioners avow that the Truth of the Charge is a legal Excuse for the permanent Dissemination of them, and at the same Time disallow the Tendency to Irritation and consequent Breach of the Peace as any Criterion of Criminality, they appear to me to overthrow all Foundation of *Criminality* whatever in Defamation, and to place the Question altogether on the Footing of whether a Civil Wrong to be estimated and compensated has been worked, or whether only a Civil Right has been exercised.

132. The only possible Ground I can assume as taken by the Commissioners for assigning Criminality to this Species of Injury is the grievous Nature of it; but if that be taken as a Criterion of Crime *à fortiori* should Adultery, Seduction, and many other Wrongs of a much more grievous Nature than Defamation (as far as can be judged from the comparative View of Damages given by Courts and Juries), and most of which are confessedly of such a Quality, most appropriately redressed by Civil Suits.

133. But although, according to the Principles entertained by the Commissioners, there appears to me no Ground for their including Defamation in the Catalogue of Crimes, the Bulk of Society, I believe, have always felt that the free Liberty of publishing everything which is merely true would be publicly mischievous,—would be often most disgraceful to the malicious Publisher,—would be often unjustly painful and injurious to the Party sought to be disgraced by the Publication. Instances could be too easily cited. It appears to me that this Chapter errs throughout, as well in *Principles* as in *Details*.

134. The English Law of Libel is said to be defective for Want of any Definition of what is *Libel*. It is so defective from the very Nature of the Act. The Quality and Tendency of a Writing, as regards its Effect on moral or intellectual Character, must necessarily be Matter of Opinion. What therefore is Libel must be left to Judge or Jury to decide; and herein consists the Liberty of the Press in England;—that no Writing can be said to be a Libel till a Jury has so pronounced it. The utmost that can be done by any Rule of Law towards designating a Libel is to afford some general Characteristics by way of Guidance; but the Construction of those Characteristics, and the Existence of them in any Publication charged to contain them, must equally be left to the practical Expression of mere Opinion.

135. Whether better Characteristics, clearer in Expression and more comprehensive in Phrase, might be devised, than any which the English Law of Libel could furnish, I will not contend upon; but I think all impartial Persons versed in that Law, or unversed in any Law, will be ready to exclaim against the involved and perplexing Definitions of Defamations, with its accompanying Explanations and Exceptions, as detailed in this Chapter. Such Phrases as “attempting to cause it to be believed” instead of the Term “publishing,” and designating the Matter published as “an Imputation which would harm Reputation” in “the Quarter” where “believed,” but which is not to be Defamation if published “in good Faith” respecting the Conduct of a public Servant in the “Discharge of his Functions,” or if “published of any Person respecting his Conduct touching any public Question, or being Censure of the Conduct of a Person in *Matters* to which the Publisher’s lawful Authority over another relates,” and so on, appear to me to give the widest Latitude of Construction. So again, the Gloss put by One of the Illustrations upon the Meaning of “attempting to cause it to be believed,” under which all Publishers of Libels are to be held guiltless unless their *Intention* appears of causing the Imputation to be believed (instead of a Matter of Mitigation under Circumstances), gives a general Franchise of libelling, unchecked by anything but mere arbitrary Discretion. The various *Modes* which may be adopted of Publication or “attempting to cause it to be believed” by no means help out the vague Generality of the Phrase adopted. They are all obvious Methods of Publication.

all, but are all qualified by Reference to the ulterior *Intention* of the Parties in so issuing the Libel.

136. It will be enough, in conclusion, to specify One or Two of the inexpedient Doctrines of this Chapter, as they appear to me. I have sufficiently noticed that of *Truth* as a Justification of *Criminal* Libel. It may be added here, that the *necessary* engrafting a long and difficult *special* Plea of Justification (as suggested by the Commissioners) in the Law "of *Procedure*" will greatly encumber the practical Operation of that Law. I know not on what Principle Libels against *public Bodies* or *Collection of Persons* are exempted from Criminality. I conceive that such Defamation is eminently the most criminal, construing Crime as *public Injury*. The Liberty given of expressing "in good Faith any Opinion whatever respecting the Conduct or Character of any Party, Witness, or Agent in any Case brought before a Court, or their Characters, as far as it appears in such Conduct," excites my Astonishment.

137. There seems to me much Propriety in making Provisions against Crimes classing under "Intimidation;" but as regards the Mode in which that Object is accomplished in this Chapter, it appears to me sufficient to point out that, without straining Constructions beyond the legitimate Meaning of the Language, any Person who shall threaten to kill his Neighbour's Cat which trespasses, intending "to distress" the Owner of it by such Threat (no Act being done), may (under Clause 482) be punished by Two Years Imprisonment.

Chapter XXVI.
Criminal Intimidation, Insult, and Annoyance.

138. It appears to me that all the Clauses against "Insults" and "Annoyances" by Words, Gestures, or Sounds must (where they deserve Criminal Punishment at all) more appropriately rank under "Defamation" or Contempts of Judicial Authorities; and it appears to me that nothing can more forcibly corroborate the Observations I have made regarding the Exemption of true Defamation from Criminal Cognizance than the Necessity of these extraordinary Enactments (as they seem to me) against insulting Words, Gestures, and Sounds, which, if they are not too trivial for any legal Cognizance whatever, can only be criminal as creating Irritation, and tending consequently to occasion Acts of open Violence.

139. Having now cursorily noted upon the several Chapters of this Code, I shall close my Labour with but a few general Remarks.

140. I have trespassed far beyond the Limits I had prescribed to myself in entering upon this Disquisition. I am fully aware that it is too long (and probably it will be thought too dull) to meet with general, if any, Attention. But the sweeping Imputations I have permitted to myself, in the sincere Endeavour to discharge the Duty placed upon me, I felt to require some specific Proof by Instances; and it was also partially my Object to draw pointed Attention to some substantive Defects and Imperfections, whether considered as mere Samples or not. In so doing I have had much Difficulty in avoiding long and argumentative Discussion; but perceived at the same Time that a mere barren Intimation of Dissent could have little Weight, and was entitled to no Authority.

141. It would have been a far more grateful Task to have expressed an admiring Assent to the Principles and the Enunciation of so grand a Work as this professes to be,—a Criminal Code for a rising Nation of 100,000,000 of Souls,—to have assisted in partial Improvements,—to have submitted my Sense of partial Defects, and to have laboured in rendering so noble a Monument of this enlightened Age as finished in Detail as majestic in its Foundations. No Man in Existence laments so much as I do that this Work should not be of a Quality to admit of such Pains or of such magnificent Hopes. The Expression of such or of still more free Opinions,—the too easy Exposure of fancied Faults,—the Quality and the eminent Abilities of those whose Labours I have thus presumed to criticise, will I feel persuaded earn for me Discredit in those Quarters where I would have my Reputation stand best. I would willingly, therefore, have kept my Opinions to myself; but, called upon as I am to disclose them by the Authority to which such a Duty is owed, I can only lament my Misfortune that my Sentiments can be no other.

142. I admit the Reach of Thought displayed as well throughout the Text as the Notes and Observations of the Commissioners. I admit the Soundness and Value of many of their Suggestions; the general Humanity of Feeling and the Sagacity of much of the Reasoning in support of the Doctrines delivered. I am far from deeming their Labours altogether lost to the Public, and discredit-

able to themselves. It might be thought then that I had better have desisted on these Topics than have undertaken this invidious Scrutiny into presumed Faults. But perhaps I have already at the Outset sufficiently explained the Uselessness of such an Employment. Neither has anything been called for at my Hands than to point out *Defects*, and to suggest *Improvements* in the Details of a substantive Body of Law. But my Objection to the Code is to it as a *whole*. I conceive it framed on erroneous Principles. I deem it constitutionally defective, and that it requires Reconstruction throughout, and to be elaborated upon a different Plan, and upon far more extensive Data.

143. It may be assumed that I deprecate the Adoption of this Code, as pregnant with practical Mischiefs, and as likely to produce general Discontent and Disorder in the Administration of Justice; and it may be assumed that if upon Experience no such Evils manifested themselves, the Code would at once be accredited by the Text of Experience. On this Point I crave to submit a few Observations.

144. I do not think that such Disorders would appear. I think that Crime and Outrage would be repressed under the Guidance of this Code, and that the *general* Administration of Criminal Justice might be fair and upright. I should, however, entertain the same Opinion if Criminal Justice should be continued to be administered under the much-denounced Regulations. Nay, whether the Koran or the Pentateuch be the text Rule for administering Justice, still by the Help of Glosses and Comments we know that out of such a Text a Body of Law may be compiled under which extensive and civilized Nations may be governed in Peace and Security. So in India, among a peaceably disposed, industrious, and submissive Population, there is no Body of Law, however defective, and even absurd as such, which serving, but as a general Guide, to be helped out by Constructions and Adaptations, and administered by enlightened and upright Men, might not suffice for effecting substantial Justice generally, free from national Complaints or public Disorders. But this proves little as to the Merit of such a Body of Law as containing *just* and *ascertained* Rules of Right. Such a Body of Law could not so well suit a Nation more advanced in Civilization. Indeed the Advance of a Nation would necessarily be impeded by so defective a System of administering Justice. It is not the temporary Operation of the general Body of Law, but the Results of long Experience under them, which must exemplify their Tendency. India may be governed, as it is in *Peace and Quietness*, and in all its existing Prosperity, for Ages, without any constitutional Plan of Power, and under a System of Law which is uncertain and eminently defective. But before it can emerge into any proportionate Enjoyment of the Prosperity which characterizes the Nations of Europe it must attain a proportionate Approximation to the Certainty, the Security, and the Purity of their Laws.

145. Entertaining these Impressions, I conceive that a Government should be averse to promulgate, for the permanent Guidance of a populous Nation, any Body of Laws which is neither a Digest of those Enactments for the Administration of Justice which the Experience of civilized Countries for Ages has sanctioned, nor even founded on the Groundwork of any existing System, unless convinced of its decided Superiority by the Testimony of the wisest and most learned Jurists. A faulty and defective Code which should supersede a better System of established Law in a highly civilized Country, in working its immediate Evils would as immediately ensure its Repeal. But such a Code, introduced among a half-civilized People, where no System of Law deserving the Name before prevailed, may work no general Evils, and may even effect a partial Benefit; but it would stamp an inferior Character on a submissive Nation, and stagnate for Ages the current of its Prosperity.

146. I allude to those Maxims in Legislation and in the Administration of the Laws which declare that such Laws are best which leave least to the Breast of the Judge, and that "Discretion in a Judge" is the First Engine in Tyranny; "that Equity and arbitrary Construction of the Judge is no better a Rule than the Measure of his Foot; that the Force of no Laws should be dependent on the Ignorance, or otherwise, of the Offender against it; and that the Intentions and Impressions of Parties are to be assumed wherever they are the natural Concomitants of their Acts." Whether the proposed Body of Laws conforms or was intended to conform to such Maxims deserves, in my Opinion, mature and scrupulous Investigation. I have come to the Conclusion that it is essentially

such Rules throughout, and I have thought that this Result has mainly been owing to a practical Deviation from the Sentiments of able Men, who judging "the Science of the Law to be the slow Growth of Time and Experience," counsel the Codifiers for the Administration of Justice to "study the Works of their Predecessors, and to select the useful and practical Parts, mitigating their Rigour in a philosophic Spirit, simplifying their Proceedings, and availing themselves of the Advantage both of their *Method* and of their *Materials*."

I have, &c.
(Signed) GEO. NORTON.
Advocate General of Madras.

No. 84.

(No. 472.)

T. H. MADDOCK Esq. to G. NORTON Esq.

Sir,

Fort William, 13th August 1838.

I AM directed to acknowledge the Receipt of your Letter of the 9th ultimo, containing your Comments on the proposed Penal Code, and to express to you the Obligation which the Honourable the President in Council feels under to you for the Trouble you have taken, and the high Sense which he entertains of the Value of the Observations on the proposed Code which are contained in your Communication.

I have, &c.
(Signed) T. H. MADDOCK,
Officiating Secretary to Government of India.

No. 85.

H. A. D. COMPTON Esq. to the LEGISLATIVE COUNCIL OF INDIA.

Honourable Sirs,

Bombay, 13th April 1838.

I HAVE the Honour to acknowledge the Receipt of your Letter of the 12th of February, forwarding for my Consideration a Copy of a (proposed) Penal Code, and requesting that I should offer such Observations upon its Provisions as might be dictated by my Acquaintance with the important Subject to which the Work relates.

Every Hour of Leisure that I could command has been employed in attentively perusing all that has been written by the Law Commissioners, and in seeking for such Information as might assist me in forming a correct Judgment on the Work forwarded for my Consideration; but I am compelled to acknowledge my Inability to offer any Observation that can be of any Value on the particular Provisions of the proposed Code. Indeed it appears to me that to consider these Provisions with that Attention which their Importance demands will require much more Time and Labour than I can spare from my public Duties while I may remain in India, especially as I expect very shortly to receive the gracious Permission of Her Majesty to retire from the Bench.

The Law Commissioners admit that the Work in which they have been engaged (and in which they must have been ably assisted) was among the most difficult in which the Human Mind could be employed; and as I cannot pretend to any great Share of that Knowledge of Judicial Metaphysics with which the Professors on the Continent of Europe are thoroughly conversant, and have not given much Thought to that "great Machine" of which English Lawyers are said to be little more than "working Engineers," I trust that I shall be excused if I do not attempt that which I feel I cannot satisfactorily perform. Even if I had not any other Employment, I am persuaded that I am not competent to offer any Opinion worthy of your Consideration on the Details and Provisions of the proposed Code.

I have formed a very strong Belief that it is impracticable to frame any Digest of Penal Law that can be suitable to all India; that all the Difficulties

which have been opposed to perfect and permanent Legislation in Europe abundantly exist in this Country; and that if the Work of Law-making for single Nations, possessing similar Creeds, and long accustomed to One Form of Government, has been found too difficult to be overcome, no Code can be constructed that will equally suit the Millions who are now subject to British Rule in India; but if, as I assume, it has been *determined* that such a System of Legislation shall be established, it would exceed the Limit prescribed by your Communication if I were to offer any Observations in opposition to the Measure.

I had actually committed to Writing, for the Purpose of being sent to you, the Opinions which I had formed on this most momentous Subject, and the Reasons for my Belief; but, on Reflection, I am apprehensive that such Matters may be deemed uncalled for and irrelevant, and I therefore abstain from submitting them to your Notice.

I will however observe, that until the Code of Procedure shall be known, when it may be ascertained by what Machinery the proposed Code is to be worked, it seems to be premature, if practicable, to examine in detail its Provisions.

I have not discovered that the Law Commissioners have framed any Provisions of a preventive Nature, otherwise than as they have declared the Punishment to be inflicted for Offences. I need not state that there are Two Ways of preventing Crime; the one, by making it impossible to commit the Offence, by anticipating and frustrating the Intentions of the Malefactor; the other, by threatening him with Punishment if convicted of Crime. Now although I do not possess sufficient Information on this Subject, my Experience during a Residence of nearly Half a Century in this Country leads me to believe that preventive Measures, such as might not be suitable to the Mother Country, might be beneficially established in India.

Trusting that you will excuse these latter Observations, which perhaps exceed what I may have been expected to state,

I have, &c.
(Signed) H. A. D. COMPTON.*

No. 86.

The SUPREME GOVERNMENT to the Honourable Sir HERBERT COMPTON.

(Legislative, No. 311.)

Honourable Sir,

Fort William, 30th April 1838.

WE have the Honour to acknowledge the Receipt of your Letter of the 13th instant, and to request that you will accept our Thanks for the Communication of your Sentiments on the Subject of the proposed Penal Code.

2. But as we are very unwilling to forego the Benefit of the Council of a Functionary who, after practising for many Years at the Bar of the Supreme Courts, and holding high Judicial Appointments both at Calcutta and Madras, now occupies the highest Situation on the Bench at Bombay, upon the important Question whether it will be practicable to construct a general Criminal Code for the whole of the British Empire in India, and as you state that you have actually committed your Opinions upon that Question to Writing, we trust that you will oblige us by communicating them.

3. We are also anxious to be favoured with a full Statement of your Sentiments upon those "Provisions of a preventive Nature" which, though they "might not be suitable to the Mother Country, might," in your Judgment, "be beneficially established in India."

We are, &c.
(Signed) A. ROSS.
A. AMOS.
W. MORRISON.
W. W. BIRD.

Sir H. COMPTON to the LEGISLATIVE COUNCIL of INDIA.

Honourable Sirs,

Bombay, 9th June 1838.

I HAVE the Honour to acknowledge the Receipt of your Letter of the 30th of April, and to express my Thanks for the very gratifying Nature of the Communication.

Not expecting that I should be permitted to offer to you the Opinion which I had formed and committed to Writing on the Expediency or Practicability of framing an all-comprehensive Criminal Code for British India, I availed myself of a recent Period of Leisure to cast what I had written into a Form in which my Observations would not appear to have been called for by Authority, or to claim any Consideration beyond their apparent Value; and as I have destroyed my former Manuscript, it will not be in my Power, without considerable Delay (for our Term has commenced), to restore my Observations to that State which would best consist with Correspondence of a public Nature. I have therefore to request that you will be pleased to excuse me for transmitting my Opinion in an unusual Shape, and that you will make a liberal Allowance for the Freedom with which I have ventured to canvass a Measure the Necessity for or the Value of which I am really unable to comprehend.

It may be thought that I have given an erroneous Construction to the Statute, in doubting the Power of the Legislative Council to establish the proposed Code, without communicating to both Houses of Parliament the Result of the Inquiries and Researches reported by the Law Commissioners; but I have stated the Grounds of my Opinion, to which you will allow such Weight only as these Grounds may seem to deserve. My Belief of the Impracticability of obtaining correct Information on the various and important Subjects commanded to be inquired into is founded on my own Experience, and the Difficulty which I have found in ascertaining, even at One Presidency, what are the "Feelings and peculiar Usages" of the Native Population at either of the other Seats of Government.

It is possible that my long Residence in India, and my Partiality for the System of Law to which I have so long been accustomed, (and which, although I am not blind to its Defects, I think may be reformed, modified, and extended to different Parts of British India,) may have disqualified me from taking a clear and unbiassed View of this important Subject; but I do most sincerely assure you, that the Experience derived from my Connexion with the Administration of Justice in India (and which you have been pleased to consider as conferring some Value on my Opinion) has abundantly confirmed the Sentiments expressed in the Observations which I have the Honour to transmit herewith, and which, perhaps too tediously, I have endeavoured to support by Authority.

With respect to Provisions of a preventive Nature, it will be seen that in the Observations, but in a general Manner, I have alluded to what is done in France and on the Continent of Europe, by the System of Passports alone, towards the Apprehension and Detention of Criminals; and although, without more Information than I pretend to possess, I cannot venture to recommend any Measures that ought to be generally adopted, yet certain Information which I obtained at Bombay shortly after my Arrival (the Result of Inquiries which in England I had been recommended to make), and which I have Reason to believe induced Lord Clare to make a considerable Change in the Police Establishment at this Presidency, may be deserving of your Consideration, provided it is not intended to establish One System that shall apply to the whole of British India.

You must be aware that considerable Differences formerly existed between the Government and the Courts of this Presidency, many of which Differences originated in Matters of Police, and that Sir James Mackintosh, at the Request of the Bombay Government, was induced to revise the then existing and to propose a new Sytem of Police for Bombay. The Establishment of it, however, in a modified Form, did not ensure the Security of the Public, or prevent Collision between Authorities demanding mutual Support. Much that was then and afterwards deemed necessary to remove Criminals, Rogues, and Vagabonds from the Island, and to prevent their Return, was pronounced to be

illegal, and many Provisions that were recommended as calculated to protect the Inhabitants, and to prevent the Perpetration of Offences, were considered to be inconsistent with English Law, and therefore were not adopted.

When the Change to which I have alluded was made in the Police of Bombay, I despaired of inducing the Government to do more than was then done; and Lord Clare being either unable or not disposed to make an Alteration which I then suggested in respect of the Appointment and Succession of stipendiary Magistrates, a Suggestion which I then considered and still consider to be of the utmost Moment, I laid aside from that Time all that I had collected and written on the Subject of the Police at Bombay, and which may be considered an Abridgment of its History and working from 1746 until the Time of my Inquiry, and it will require some Time to search for and arrange these Papers, if it shall be your Pleasure to require further Information on this Subject.

I have great Satisfaction in stating that the Change which was made in the Constitution and *Material* of the Bombay Police has been productive of the most salutary Effects, and I think that other Measures of a preventive Nature, which I formerly considered necessary, may be beneficially adopted at *Bombay*; but whether similar Provisions will be suitable for other Parts of the Empire must be left to your Decision, founded on the Information which you possess or can command.

I have, &c.
(Signed) HERBERT COMPTON.

Enclosure in No. 87.

The following Observations have been suggested by perusing the Penal Code prepared by the Indian Law Commissioners, and published by Command of the Governor General of India in Council, and by Letter of the Law Commissioners dated the 14th of October 1837, which has also been published.

By the Statute 3d and 4th William IV. C. 85 S. 53, it was declared to be expedient, that, subject to such special Arrangements as local Circumstances might require, a general System of Judicial Establishments and Police, to which all Persons whatsoever, as well Europeans as Natives, might be subject, should be established in the Indian Territories at an early Period, and that such Law as might be applicable in common to all Classes of the Inhabitants of the said Territories, due Regard being had to the Rights, Feelings, and peculiar Usages of the People should be enacted; and that all Laws, and Customs having the Force of Law, within the said Territories, should be ascertained and consolidated, and, as Occasion might require, amended, and it was therefore enacted, that the Governor General of India in Council should issue a Commission to certain Persons, not exceeding Five in Number, and to be styled "The Indian Law Commissioners," with such Powers as should be necessary for the Purposes therein-after mentioned; and that the said Commissioners should fully inquire into the Jurisdiction, Powers, and Rules of the existing Courts of Justice and Police Establishments in the said Territories, and all existing Forms of Judicial Procedure, and into the Nature and Operation of all Law, whether Civil or Criminal, written or customary, prevailing and in force in any Part of the said Territories, and whereto any Inhabitants of the said Territory, whether Europeans or others, were subject, and that the said Commissioners should from Time to Time make Reports, in which they should fully set forth the Results of their said Inquiries, and should from Time to Time suggest such Alterations as might in their Opinion be beneficially made in the said Courts of Justice and Police Establishments, Forms of Judicial Procedure and Law, due Regard being had to the Distinction of Castes, Differences of Religion, and the Manners and Opinions prevailing among different Races and in different Parts of the said Territories.

By the 54th Section of the Act cited it was further enacted, that the said Commissioners should follow such Instructions with regard to the Researches and Inquiries to be made, and the Places to be visited by them, and all their Transactions with reference to the Objects of their Commission, as they should from Time to Time receive from the said Governor General of India in Council, and that they should make such special Reports upon any Matters as by such Instructions might from Time to Time be required, and that such Reports having been considered by the Governor General in Council, together with the Opinions or Resolutions of the Governor General in Council thereon, should be laid before both Houses of Parliament in the same Manner as then by Law provided concerning Laws and Regulations made by the Government of India.

From these Enactments it seems that the Indian Law Commissioners were to have such Powers as might be necessary for the Purposes in the Statute in that Behalf particularly mentioned.

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These Purposes were:—

First, to inquire into the Jurisdictions, Powers, and Rules of the existing Courts of Justice and Police Establishments;

Secondly, to inquire into the Nature and Operation of all Law, whether Civil or Criminal, written or customary, prevailing and in force in any Part of the British Territories in India;

Thirdly, to make Reports, in which they should fully set forth the Result of their Inquiries; and,

Fourthly, to suggest from Time to Time such Alterations as might, in their Opinion, be beneficially made in the said Courts of Justice and Police Establishments, Forms of Judicial Procedure and Laws, due Regard being had to the Distinction of Castes, Difference of Religion, and the Manners and Opinions prevailing among different Races and in different Parts of the said Territories.

Such were the Inquiries directed to be made, such were the Reports the Commissioners were expected to make of the Result of their Inquiries, and such were the Suggestions which they were permitted to offer for the Alteration of the Laws, and of the Judicial and Police Establishments, but subject always to a very special Qualification, which was to be duly regarded whenever an Alteration should be recommended.

The Law Commissioners had the precise Purposes of their Appointment thus declared by the Legislature, and to fulfil these Purposes they were directed to follow such Instructions with regard to the Researches and Inquiries to be made, and the Places to be visited by them, and all their Transactions with reference to the Objects of the Commission, as they should from Time to Time receive from the Governor General of India in Council.

It would appear from the Words "the Places to be visited" that the Legislature intended the Commissioners should proceed from Place to Place to make the necessary Researches and Inquiries, and indeed from the particular Nature of the Inquiries it would seem to be impracticable for any Body of Men, however zealous or talented, to obtain in One Place satisfactory Information touching the Jurisdiction, Powers, and Rules of the existing Courts of Justice, or the Police Establishments, or the Nature or Operation of all Civil and Criminal Law, written or customary, prevailing or in force in every Part of the British Territories in India.

It also appears from the Language of the Statute that the Reports made by the Commissioners were to be considered by the Governor General in Council, and that such Reports, together with the Opinions or Resolutions of the Governor General in Council thereon, were to be laid before both Houses of Parliament.

Now as it is directed by the 51st Section of the Act that all *Laws and Regulations* to be made by the Governor General in Council, in pursuance of that Statute, should be laid before both Houses of Parliament, it may be inferred that the *Opinions and Resolutions* of the Governor General in Council on the Reports of the Commissioners were not to become *Laws or Regulations* until they should be submitted to the Consideration of Parliament.

Certain Commissioners were appointed under the Authority of the Act referred to, but it is not known what particular Instructions were received by them with regard to the Researches and Inquiries to be made, or the Places to be visited, and we are yet uninformed whether any and what Reports have been made by the Law Commissioners with reference to the Objects of their Commission, save as may be collected from a Letter addressed by them to the Governor General in Council, Date the 14th of October 1837.

From that Letter it appears that the Law Commissioners on the 2d of May preceding had laid before the Governor General of India in Council a Penal Code, "according to the Orders of Government of the 15th of June 1835," and the Commissioners, alluding to that Code, observe, "Your Lordship in Council will perceive that the System of Penal Law which we propose is not a Digest of any existing System, and that no existing System has furnished us even with a Groundwork. We trust that your Lordship in Council will not hence infer that we have neglected to inquire, as we are commanded to do by Parliament, into the present State of that Part of the Law, or that in other Parts of our Labours we are likely to recommend unsparing Innovation, and the entire sweeping away of ancient Usages. We are perfectly aware of the Value of that Sanction which long Prescriptions and national Feeling give to Institutions. We are perfectly aware that Lawgivers ought not to disregard even the unreasonable Prejudices of those for whom they legislate. So sensible are we of the Importance of these Considerations, that though there are not the same Objections to Innovation in Penal Legislation as to Innovation affecting vested Rights of Property, yet if we had found India in possession of a System of Criminal Law which the People regarded with Partiality* we should have been inclined rather to ascertain it, to digest it, and moderately to correct it, than to propose a System fundamentally different."

The Commissioners next proceed to state, that none of the Systems of Penal Law established in British India had any Claim to their Attention, except what it might derive from its intrinsic Excellence. That all these Systems were foreign; that all were intro-

* Without Inquiry how could the Law Commissioners have ascertained the Sentiments of the People in different Parts of India?

duced by Conquerors, differing in Race, Manners, Language, and Religion from the great Mass of People; that the Criminal Law of the Hindoos was long ago superseded through the greater Part of the Territories now subject to the Company, by that of the Mahomedans, which is certainly the last System of Criminal Law which an enlightened and humane Government would be disposed to revive; that the Mahomedan Criminal Law had been superseded to a great Extent by the British Regulations; that in the Territories subject to the Presidency of Bombay the Criminal Law of the Mahomedans, as well as that of the Hindoos, had been altogether discarded, except in One particular Class of Cases; that even in such Cases it was not imperative on the Judge to pay any Attention to it; and that the British Regulations, having been made by Three different Legislatures, contain, as might be expected, very different Provisions.

The Commissioners point out particular Instances in which Forgery, Perjury, and other Offences are visited with different Measures of Punishment, and add, that they cannot recommend any One of the Three Systems as furnishing even the Rudiments of a good Code.

The Law Commissioners notice in the following Terms the Penal Law of the Bombay Presidency:—"The Government of that Presidency appears to have been fully sensible of the great Advantage which must arise from placing the whole Law in a written Form before those who are to administer and those who are to obey it, and, whatever may be the Imperfections of the Execution, high Praise is due to the Design. The Course which we recommend to the Government, and which some Persons may perhaps consider as too daring, has already been tried at Bombay, and has not produced any of those Effects which timid Minds are disposed to anticipate even from the most reasonable and useful Innovations. Throughout a large Territory, inhabited to great Extent by a newly-conquered Population, all the ancient Systems of Penal Law were at once superseded by a Code, and this without the smallest Sign of Discontent among the People."

"It would have given us great Pleasure," continue the Commissioners, "to have found that Code such as we could with Propriety have taken as the Groundwork of a Code for all India; but we regret to say that the Penal Law of the Bombay Presidency has over the Penal Laws of the other Presidencies no Superiority except that of being digested. In framing it the Principles according to which Crimes ought to be classified and Punishments apportioned have been less regarded than in the Legislation of Bengal and Madras."

The Law Commissioners point out particular Errors, which they suppose to have been the Effects of Inadvertence, and certain Enactments which could not thus be excused, and proceed as follows:—

"Such is the State of the Penal Law in the Mofussil. In the meantime the Population which lives within the local Jurisdiction of the Courts established by the Royal Charters is subject to the English Criminal Law, that is to say, to a very artificial and complicated System, - to a Foreign System, which was framed without the smallest Reference to India, - to a System which even in the Country for which it was framed is generally considered as requiring extensive Reform, - to a System, finally, which has just been pronounced by a Commission composed of able and learned English Lawyers to be so defective that it can be reformed only by being entirely taken to Pieces and reconstructed."

The Law Commissioners afterwards proceed to explain the Manner in which they had framed the proposed Code, and repeat that they had not thought it desirable to take as its Groundwork any of the Systems of Law now in force in any Part of India. They add, that they have compared their Code with all the Systems in force in India, and have taken Suggestions from all; that they have also compared their Work with the most celebrated Systems of Western Jurisprudence; that they have derived much valuable Assistance from the French Code, and from the Decisions of the French Courts of Justice on Questions touching the Construction of that Code, and that they have derived Assistance still more valuable from the Code of Louisiana, prepared by the late Mr. Livingstone.

The Reasons for such Provisions as appeared to require Explanation are stated to be appended to the proposed Code in the Form of Notes; and the Law Commissioners, after copious Observations on the Advantages which are likely to be derived from "the Definitions and Illustrations" which they have framed, and to which Allusion will be made hereafter, observe that, for Reasons which have been fully stated to the Governor General in Council in another Communication, they had not inserted in the Code any Clause declaring to what Places and to what Classes of Persons it shall apply.

The Law Commissioners also observe, that in many Parts of the proposed Code they have referred to the Code of Procedure, which as yet is not in existence, and that thence it might possibly be supposed to be their Opinion that till the Code of Procedure is framed the Penal Code cannot come into operation. "Such, however," add the Commissioners, "is not our Meaning. We conceive, that almost the whole of the Penal Code, such as we now lay it before your Lordship, might be made Law, - at least in the Mofussil, - without any considerable Change in the existing Rules of Procedure. Should your Lordship in Council agree with us in this Opinion, we shall be prepared to suggest those Changes which it would be necessary immediately to make."

The foregoing Extracts contain nearly every Statement in the Letter alluded to which can tend to explain the Reasons of the Law Commissioners for framing and recommending

ing the proposed Code, and for rejecting the Systems of Penal Law which now prevail in British India. The Quotations from the Letter are long, but they have been made at length, to show in what Manner the Intentions of Parliament and the Objects of the Commission have been attended to, and that the proposed Code seems recommended to be made Law in the Mofussil before it shall be submitted to Parliament.

From this Letter of the Law Commissioners it is difficult to collect that they, if instructed by the Governor General in Council so to do, have made the Researches or Inquiries which were contemplated by Parliament; and it is believed that the Commissioners have not at any Time quitted Calcutta to visit any Place where Information might have been obtained.

The Regulations of the Three Presidencies were within the Reach of every Person. The Errors and Defects pointed out by the Law Commissioners could have been discovered, and the Law which is administered within the local Jurisdiction of the Supreme Courts might have been fully known to any Person instructed to frame a Bill for the Consideration of the parent Legislature; and it is difficult to perceive what has been done by the Commissioners at Calcutta that might not have been as easily performed in London.

Before any System of Penal Legislation can be framed that shall apply to every Class in every Part of British India, ought not correct and particular Information to be sought, wherever it can be obtained, touching such Laws as may be applicable in common to all Classes of the Inhabitants of the British Territories, due Regard being had to the Rights, Feelings, and peculiar Usages of the People? And if this was the Design of the British Parliament, how does it appear to have been carried into effect? The Law Commissioners, indeed, assert, that it is *not* to be inferred that they have *not* inquired, as directed by Parliament, into the present State of the Penal Law prevailing in India. But why does it not appear that they *have* in fact made the Researches and Inquiries directed by Parliament,—and how and where such Inquiries have been made?—and why has not the Result of such Researches and Inquiries been made public?

If the proposed Code is to become the Law of all British India,—and the Commissioners seem to suggest its immediate Introduction into the Mofussil,—of what Avail has been the Caution of Parliament? It is manifest that Parliament was aware that in the immense Territories and among the Millions of People subjected to British Rule there exist Distinctions of Caste and Difference of Religion, and that the Manners and Opinions which prevail among different Races, and in different Parts of the Territories, are essentially dissimilar.* It is also admitted by the Law Commissioners, that ancient Systems of Penal Law have prevailed in India, and that ancient Usages ought not to be swept away by unsparing Innovation, and yet they have recommended the Adoption of a Code formed out of Materials to the Public as yet unknown,—a Code admitted not to be based on either of the Systems of Law hitherto known to the People who are to obey it, which is certainly novel, with Definitions and Illustrations very peculiar,—a Code which it is very difficult to comprehend, and which, it is supposed, will baffle all Attempts at correct Translation into the vernacular Languages of India; yet this Code is to become the Rule of Conduct of all Castes, Classes, and Races, and is to be applicable to all Places within the British Territories in India!

If all the ancient Systems of Penal Law, the Regulations framed at the Three Presidencies, and the English Law, which during nearly a Century has been there administered, shall be thus at once superseded, ought we not to be informed what Inquiries have been made by the Commissioners to enable them to estimate “that Sanction which long Prescription and National Feeling give to Institutions?” Should we not receive some Assurance that the Prejudices, reasonable or unreasonable, of the Millions of People on whom the new Law must operate, have been ascertained and considered? And even presuming that everything has been done by the Law Commissioners which Parliament directed or expected, where may the Public find the Result of their Inquiries, and where discover the Information that the Commissioners have obtained? It is possible that Reports may have been laid before the Government, which may enable it to perceive that the proposed Code is in conformity with the Principles by which the Law Commissioners profess to have been governed in its Construction, and which may enable the Government to form Resolutions or Opinions on its Suitableness for all the British Territories in India; but no such Reports are mentioned by the Law Commissioners, and if they exist the Information which they contain has been withheld from the Public.

If indeed there are such Reports, and if they contain Information respecting existing Systems of Law, or those which formerly prevailed,—Reports which exhibit the Rights, Feelings, and peculiar Usages of the People of India,—which explain what Laws, and Customs having the Force of Law, have hitherto obtained, but which should no longer

* In Page 90 of the Notes of the Law Commissioners, on the Subject of Offences relating to Marriage, the Difficulty of framing a general Law is thus admitted:—“To make all Classes subject to One Law would evidently be impossible. If the Law be made dependent on the Race, Birthplace, or Religion of the Offender, endless Perplexity would arise. Races are mixed;—Religion may be changed or dissimulated;—an East Indian, Half English Half Asiatic by Blood, may call himself a Muhomedan or Hindoo, and there exists no Test by which he can be convicted of Deception,” &c.

be regarded,—which point out what Prejudices exist, what Prejudices may be suffered to remain, and what Prejudices should be removed or overcome,—and if these Reports can enable the Parliament to determine what Portions of Law may be applicable in common to all Classes of the Inhabitants of India,—it should seem that such Reports ought to have been communicated to the Public, to enable those who are to be governed by the proposed Code to petition the Government of India or the Parliament against the Enactment of such Parts of the Law as may be thought inconsistent with the Sentiments contained in the Reports, with the actual Condition of the People, or which are likely to be too severe or oppressive.

In the Absence of any Information which the Reports may contain, the proposed Code, which seems framed to apply to every Part of British India, savours very much of “unsparing Innovation.”

If, however, the Law Commissioners have not been *instructed* to inquire, or, if instructed, have not *inquired*, or have not made Reports respecting their Transactions with reference to the Objects of their Commission, how are we to account for the Formation, without Inquiry, of the proposed Code of Penal Law?

Referring to the Language of the Legislature to ascertain its Intention, we shall perceive that an *entire* Change of all the Penal Law then existing in British India was not contemplated. It was declared to be expedient that, subject to such special Arrangements as local Circumstances might require; a general System of Judicial Establishments and Police, to which all Persons, as well Europeans as Natives, might be subject, should be established *at an early Period*, and that *such Laws as might be applicable in common* to all Classes of the Inhabitants of the said Territories, due Regard being had to the Rights, Feelings, and peculiar Usages of the People, should be enacted; and that all Laws, and Customs having the Force of Law, within the same Territories, should be *ascertained and consolidated*, and, as Occasion might require, be *amended*.

From this Language it is not to be collected that the Parliament contemplated the framing of a Code of Penal Law which should be applicable to all Classes of the Inhabitants, without due Regard to the Rights, Feelings, and peculiar Usages of the People, or without ascertaining what Laws and Customs then had the Force of Law within the said Territories; and if not, may it not again be asked, what has been done by the Law Commissioners to ascertain the Rights, Feelings, and peculiar Usages of the People, or the Laws and Customs which have had the Force of Law?

It may here also be observed, that these Laws and Customs, when ascertained, were not intended to be disregarded or entirely swept away. No; they were first to be *ascertained*, and then *consolidated*, and, as Occasion might require, amended.

The Parliament having thus declared what it considered expedient to do, at an early Period, and the Extent to which it intended that Legislation should proceed, but with a very special Qualification, next directed that the Law Commissioners should be appointed. For, after the Declaration of what was deemed *expedient*, the Clause proceeds thus:—“Be it *therefore* enacted, that the Governor General in Council shall issue a Commission,” &c.

It will not be contended that the Directions contained in the subsequent Part of the Act are not to be considered as the necessary Means to the End before expressly declared, or that the Inquiries and Researches directed to be made by the Law Commissioners were not intended to enable either the Government of India or the Parliament to do what it had so declared to be expedient; and if so, the Reports which the Commissioners were directed to make were manifestly designed to furnish Materials for some *modified* Legislation, and for making such Changes, Consolidation, and Amendment as such Reports might show to be necessary.

If Codification had been designed, either with or without the Inquiries directed to be made, it would have been so expressed in the Statute, and it seems highly improbable that if the Law Commissioners were to be permitted to exercise a Discretion respecting the Manner or the Extent of the Legislation to be adopted, or if they were to have Authority to frame a Penal Code which should supersede every existing System in India, that they would have been expressly directed “from *Time to Time* to suggest such *Alterations* as might in their Opinion be beneficially made in the Forms of Judicial *Procedure, Laws,*” &c. Surely a Power to suggest *Alterations* in Law cannot confer a Power to *subvert or repeal* the whole System of Law.

But it may be said that the Governor General of India in Council must have instructed the Law Commissioners to prepare a Penal Code, such as has been submitted to the Government, and that the Law Commissioners have acted in strict Obedience to such Instructions.

If this be so, it will excuse the Law Commissioners for having pursued a Course which it should seem was not contemplated by Parliament; but a Question will then arise, whether it was competent to the Governor General in Council to give Instructions to the Law Commissioners to prepare a Penal Code for all British India.

The Instructions which the Governor General in Council could lawfully give seem to be plainly expressed in the 53d and 54th Sections of the Statute already quoted. The Objects of the Law Commissioners are particularly explained in the 53d Clause; and in that which follows the Commissioners are directed “to follow such Instructions with regard to Researches and Inquiries to be made, and the Places to be visited by

and all their Transactions, with reference to the Objects of their Commission, as they should from Time to Time receive from the Governor General in Council."

It is an acknowledged Rule, that whenever the Intention which the Makers of a Statute entertained can be discovered, it ought to be followed in its Construction, in a Course consonant to Reason and Discretion; and we are not to presume that the Legislature of England has abdicated its Functions or delegated its Powers otherwise than as expressed in the plain Language which it has employed to convey its Meaning.

By the 43d Section of the Statute under Consideration, very important Powers have been conferred on the Governor General in Council, to make Laws and Regulations, and for repealing, amending, or altering any Laws or Regulations then in force, except as to Matters therein-after mentioned; but by the 51st Section it is provided, that nothing in the Act contained should extend to affect in any way the Right of Parliament to make Laws for the said Territories and for all the Inhabitants thereof; and there is an express Reservation of a full, complete, and constantly existing Right and Power in Parliament to control, supersede, or prevent all Proceedings and Acts whatsoever of the said Governor General in Council, or to repeal or alter at any Time any Law or Regulation whatsoever made by the said Governor General in Council, and in all respects to legislate for the said Territories and all the Inhabitants thereof in as full and ample a Manner as if that Act had not been passed; and the better to enable Parliament to exercise at all Times such Right and Power, all Laws and Regulations made by the said Governor General in Council were directed to be transmitted to England, and laid before both Houses of Parliament, in the same Manner as was then by Law provided, concerning the Rules and Regulations made by the several Governments of India.

If the 53d and 54th Sections had not been introduced into the Act it might, perhaps have been reasonably contended that the Powers conferred by the 43d Section on the Governor General in Council would have justified the framing and passing of the proposed Penal Code, subject to the Power of Parliament to vary or to repeal it; but the Intention of Parliament, expressed in the 53d and 54th Sections, manifestly shows that an *entire* Change was not intended in the Jurisprudence of British India, and that the Change contemplated was not to be made until the Inquiries and Researches thereby directed should have been completed, or until full and complete Information should have been obtained.

The Direction that the Reports of the Law Commissioners, with the Opinions and Resolutions of the Governor General in Council, should be laid before Parliament, (as alluded to already,) affords, moreover, the strongest Presumption that Parliament reserved to itself the Right of determining whether the Suggestions contained in such Reports, or the Opinions and Resolutions of the Governor General in Council thereon, should or should not become the Groundwork of a Law for British India.

The Law Commission having been called into existence for the special Purposes and Objects plainly expressed in the Act, and for no other Purpose, and the Instructions which the Law Commissioners were to receive having been limited by Parliament to "*the Objects of the Commission*," it seems difficult to contend with Effect that the Governor General in Council was authorized to instruct the Law Commissioners to prepare the proposed Code.

But if the Power of the Governor General in Council shall, for the sake of Argument, be admitted, it is difficult to believe that the Law Commissioners were in fact instructed to prepare a Code of Penal Law for all British India, without reference to the Objects of the Commission, because, in a Passage of their Letter already quoted, they have declared, "We trust that your Lordship in Council will not hence infer that we have neglected to inquire, as we are commanded to do by Parliament, into the present State of that Part of the Law." It is deeply to be regretted that the Law Commissioners, instead of thus combating an Inference did not plainly state into what Part of the Law they had inquired, and in what particular Manner the Inquiry had been made, with its Result; in other Words, *how* they had done that which by Parliament they had been commanded to do.

It is a most remarkable Feature in the Letter from the Law Commissioners to the Governor General in Council, that they have been most particular in explaining what has *not* been the Groundwork of the proposed Code,—what Systems they have *rejected*, and what Provisions they have *not* adopted,—but that the Public is left to conjecture out of what Materials this Work has been constructed,—how they have formed its Groundwork,—or how they have raised the Superstructure.

But even admitting, for the Purpose of considering the Code itself, that all that has been directed by Parliament has been substantially done, and that the Law Commissioners have been instructed to prepare a Penal Code which shall supersede all the Systems which now exist in British India, it may yet be important to inquire,—

1st.—Whether it is expedient, if practicable, at once to change the Penal Jurisprudence of all British India;

2d.—Whether, taking into consideration the numerous Europeans, Descendants of Europeans, Hindoos, Mahomedans, and Parsees, and the Foreigners of every Country and Description, now subject to the British Dominion in India, and having a due Regard to the

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Distinction of Castes, the Difference of Religion, and the Manners and Customs of different Races in different Parts of the British Territories, it is practicable to form One System of Law that can or ought to be applicable to every One in common;—and

3d,--Whether the Code which has been proposed is likely to produce the Benefits which the Law Commissioners profess to expect from it.

With respect to *Expediency*, it should seem that the Declaration of Parliament has already decided what Legislation is *expedient*, and under what Circumstances, and subject to what Qualification, a Change of Law should be made. "*Such Law as may be applicable in common to all Classes of the Inhabitants, Regard being had to their Rights, Feelings, and Usages,*" shall be enacted. No Language can express more plainly that it was not the Intention of the Legislature,—in short, that it was not *expedient*, to change the *whole* Penal Jurisprudence of British India.

On the Second Question,—to consider the *Practicability* of legislating by One Code for the Millions who are subject in India to British Rule,—it may be necessary to observe at considerable Length to advert to many Circumstances which distinguish the Inhabitants of India from all other People on the Earth, and to examine the Effects produced by similar Legislation in other Countries; and if shall be found that this System of sweeping Legislation has not produced the Benefits which have been expected even with People who have long been subject to the same Form of Government, and who profess the same Creed, and that hitherto there has been found an inherent Difficulty in framing any System of *written* Law, it may well be doubted whether it be *practicable*, if *expedient*, to make Penal Enactments that shall be deemed equally applicable to every Description of Person in every Part of British India.

With respect to the Code which has been prepared by the Law Commissioners, some Remarks will be hereafter submitted, especially on the Passage of their Letter to the Governor General in Council in which they explain their Reasons for framing "*Illustrations of their Definitions,*" and avow an anxious Desire to limit the Power which Courts of Justice possess, of putting their own Sense on the Laws; and if it shall appear that similar Attempts to simplify Criminal Codes have utterly failed, and that it is no longer considered useful to attempt to render them perfect by the Introduction of all possible Cases (which, after all, is deemed an Impossibility), it may be expected that if due Research and Inquiry be yet made the Law Commissioners may discover in the Systems of Penal Law which now prevail in British India sufficient and sound Materials for making such Alterations and Amendment in this Branch of Jurisprudence as the present Form of Government and the Condition of the People may require.

These Observations, and such as may occur from the detailed Consideration of this truly important Subject, will be offered without Order or Arrangement; but although the Remarks may be desultory or immethodical, some of them may chance to deserve the Consideration of the Authorities on whom it will depend either to convert the proposed Code into Law or to adopt some more limited and suitable System of Penal Legislation.

It has been already remarked, that the Law Commissioners, instead of explaining from what Materials they have framed their Digest, have been particular in denoting the prevailing Systems of Law which they have rejected; and if they have not discovered in the Condition of the Inhabitants of British India any special Reason for preparing and recommending the proposed Code, it may be useful to recall to mind some of the authoritative Opinions which have been opposed in Europe to this Form of Legislation.

As it does not appear to have been intended by Parliament that a Code of Penal Law should be prepared for all India, and as the Public is uninformed of any particular Instructions that may have been given to prepare such a Digest, the Recommendation of such a System of Legislation must be found either in its intrinsic Excellence or in the Reasons which have been assigned for adopting it as particularly suitable to British India.

Indeed it should seem that the Result of local Inquiry, and a Knowledge of Circumstances peculiar to India, could alone justify the framing of the proposed Code; for if the intrinsic Excellence or Superiority of Codification be admitted, if the Science of Law-making has in truth attained to such Perfection that a System suited to all Races, Classes, Castes, and Religions may be framed, without Regard to national Character, or to the Habits, Manners, and Morals of the People who are to obey, and if another Bentham can construct a Code for Spain, for Russia, or for India, it would seem that the Labours of the Law Commissioners might have been dispensed with.

The Public will probably expect some Explanation from the Law Commissioners,—**Why** they have adopted this particular Mode of Legislation?—**Why** they have voluntarily attempted to perform that which they admit "is among the most difficult Tasks in which the Human Mind can be employed," and that which Persons "placed in Circumstances far more favourable than theirs had attempted with very doubtful Success?"*—**Why** they have not made the Inquiries, Researches, and Reports commanded by Parliament?—And why, instead of making Suggestions for the Alteration of the existing Laws, they have proposed and framed a System fundamentally different?

* In Confirmation of the Difficulty of the Task, see a Note appended to these Observations.

written by the Law Commissioners respecting the Bombay Regulations has been already quoted; but, notwithstanding the numerous Imperfections which exhibit, and notwithstanding the Law Commissioners consider it to have no Superiority over the Penal Law of the other Presidencies, or of being digested, yet they say that the Introduction of these Regulations into the Territories subject to the Government of Bombay did not produce "any of the Effects which timid Minds are disposed to anticipate even from the most reasonable and useful Innovations," and therefore the Law Commissioners have recommended to the Government of India that "which some Persons may perhaps consider too daring," but which has already been tried at Bombay.

This, it should seem, is the chief if not the only Reason assigned by the Law Commissioners for the Adoption of the Code under Consideration.

If the ancient Systems of Penal Law were at once superseded by the Bombay Code (as it is called), "without the smallest Sign of Discontent among the People," and if this be the best Reason that can be assigned for trying a similar Experiment throughout the British Territories in India, it may be fit to consider whether the Absence of Discontent among the People subject to the Bombay Government affords any satisfactory Proof of the Unsuitableness of the System of Law which it superseded, or of the Utility, if practicable, of framing a Code for all India. It would seem that quiet Submission to a Law peculiarly, but which has been found to be most imperfectly, framed, is not a very sound Recommendation for the Adoption of a similar Mode of Legislation; and the Submission of the People may be ascribed to "timid Minds," to the Power of the Government, and to the Want of suitable Means for expressing the public Opinion.

It appears extraordinary that the Law Commissioners have not inquired, from Persons in the Provinces subject to the Government of Bombay, capable of affording impartial Information, respecting the Effect actually produced on the Security and Happiness of the People by the Administration of Penal Justice in conformity with these Regulations; for, as the Law Commissioners do not allude to such Inquiry, it may be presumed that it has not been made. If it had been ascertained that the Bombay Digest, so judiciously designed, although imperfectly executed, had worked well in promoting the Objects of Penal Legislation, might not its Imperfections have been remedied, or might not the Errors detected by the Law Commissioners have been corrected? And even if the Bombay Digest would not have formed the Groundwork of a Code for all India, might it not have been allowed to form the Rudiments of a System suited to the Territories over which the existing Regulations extend? If, in truth, the Law which superseded the ancient Systems was really acceptable to a newly-conquered Population,—if the Innovation has been welcomed as reasonable and useful, —and if the People under the Bombay Government have regarded the new System with Partiality,—why have the Law Commissioners failed to ascertain that which is good, and to reject and correct that which is otherwise, instead of proposing a System fundamentally different?

Either the System introduced at Bombay, subject to Alteration and Amendment, is suitable to the Territories over which it extends, or it is not. If it is suitable, and is regarded with Partiality, why destroy it? If it be not suitable, or is not regarded with Partiality, why should the Failure of an imperfect Experiment at Bombay be a Recommendation to extend One of a similar Nature to the whole of British India?

Until it shall satisfactorily be ascertained that the Laws enacted for the Bombay Provinces have fulfilled the reasonable Expectations of the People,—that they are consonant with public Feeling, and have been voluntarily preferred to the Systems which formerly prevailed,—it cannot be fairly contended that Submission to Rules imposed by Conquerors is any satisfactory Test of the Excellence of the Law, or of the Form in which it has been promulgated.

It should also be remembered, that the Forms of Procedure in the Provincial Courts did not afford all the Means of eliciting public Opinion in respect of the Character of Penal Law which Procedure alone supplies in the Courts of Her Majesty in India as well as in England. On the Importance of Procedure, which seems to have been treated very lightly by the Law Commissioners, Observations will presently be submitted.

It appears, therefore, that the only Reason mentioned by the Law Commissioners as connected with local Circumstances is not sufficient to account for their Recommendation to enact a Penal Code applicable to all India, and until further Information shall be obtained those who are acquainted with the present Condition of the numerous and dissimilar Inhabitants of this Country may doubt whether even a plausible Recommendation has accompanied the proposed Digest, or whether the Reasoning or the Work of the Law Commissioners has in any respect refuted the Arguments of many of the most learned Jurisconsults of Europe, who maintain the Impracticability of Codification.

But it may also be questioned whether any accurate Judgment can be formed of the Nature or the Provisions of the proposed Digest until a Code of Procedure shall be framed to carry the Penal System into operation. This Consideration, indeed, presupposes the Existence of the Code; but it should seem that its Value or its Character cannot be duly investigated unless it be known in what Manner, by what Courts or Magistrates, in short, by what Machinery, the Law is to be administered; and it should also be ascertained whether the People are to have any Share in the Administration

of Penal Justice, whereby they may be enabled to express their Opinion, if the Law shall prove too severe or too oppressive.

One of the most enlightened continental Jurists has declared that Procedure is to a Nation more deserving of Attention than either the Rules of Property or the Penalties attached to Crime; and that both Civil and Criminal Procedure are, with reference to the general Happiness of the People, of much higher Interest than Civil, Commercial, or Penal Legislation.

It is admitted that there is no absolute Necessity for including Procedure in the *same* Code with the Law, and that the French have separated them; but it seems to be considered necessary that the Code of Procedure should at least appear *contemporaneously* with the Law. They may be considered Part; but, in Systems based on such a Principle as prevails in the Criminal Courts of France and Germany, Law and Procedure seem to be inseparable; and therefore, until we are made acquainted with the intended Constitutions of the Criminal Courts, and with the Machinery by which the proposed Code is to be worked in India, it will be premature, if practicable, to examine in detail its Provisions.

Although the Law Commissioners do not consider it necessary that the Penal Code should be suspended until the Code of Procedure shall be framed, and although they have avowed an Opinion that the proposed Code may be made Law, at least in the Mofussil, without any considerable Change in the existing Rules of Procedure, this Opinion will deserve the greatest Consideration from the Government of India before it shall be adopted, even if the Power be possessed to establish the Code,—a Power which, with great Deference, is questioned.

It is believed that previous Investigation or Trial by Jury does not prevail in the Mofussil Criminal Courts, and that no Portion of the Community, except those who are officially attached to the Courts, can be considered as co-operating in the Execution of Penal Law; and if this be so, and if this System is to be continued, it appears to be indispensably necessary that the Code of Law and the Code of Procedure should be considered together, and not separately.

It has been observed that a Legislator has to consider not only what Punishment seems to be necessary, but also what People in general consider to be necessary; and in different States of Civilization, when the social Feelings are unequally developed, the Sufferings occasioned by the same Punishment may excite different Degrees of Pity, apart from the political Circumstances of the Community; and if this be correct, should not the Mode of executing the Law afford to the People some Means of expressing their Opinion of its Character, and must not the Means very much depend on the System of Procedure that may be established?

It should also be remembered that a Criminal Law can only be carried into effect by the Assistance of Prosecutors, Witnesses, and (in some European Courts) of Jurymen, who, being independent of the Government, will not co-operate to compass an End which they think pernicious; and that when Crime of which the Mischief is slight is likely to be severely punished, injured Parties will not prosecute, Witnesses will not give Evidence, Jurors will not convict, and Judges will seek to furnish them with Excuses for evading the Law. The Lawgiver thus by extreme Severity frustrates his own Purpose, and by attempting to inflict too great a Punishment produces Impunity.*

The most momentous Consequences have resulted from Changes in Procedure, especially in France; and some of them may be noticed, for the Purpose of strengthening the Opinions that are here submitted touching this important Subject.

According to the System of Judicature which immediately followed the First Revolution in France, a Jury of Accusation afforded Protection to Parties charged with Offences similar to the Protection which is derived from our Grand Jury, and this Change in the Procedure furnished such a Shield to the innocent that when the National Convention created the Revolutionary Tribunal it was found necessary to have the Jury of Accusation named by the Tribunal itself, and the Consequences are well known. Napoleon afterwards contrived, through the Instrumentality of a Committee of Legislation, to have the Jury of Accusation abolished.

Now, so long as this Institution prevailed, it proved highly beneficial in checking and controlling the Severity of the Law, and in protecting the innocent; but afterwards, when the Jury of Accusation was partially chosen, and when it was subsequently abolished, the most fearful Mischief prevailed in the Administration of Criminal Justice.

There cannot, therefore, be any Doubt that Procedure is of the First Importance in considering the Character of Penal Law, and that even mild and equal Laws may be rendered severe and oppressive by arbitrary Procedure.

* The Law Commissioners seem to have been aware of the Importance of these Considerations. In a Note on the Subject of Homicide committed in violent Passion, suddenly provoked, they assign the following Reasons for not treating a Person guilty of such Homicide as a Murderer:—"It would be an highly inexpedient Course,—a Course which would shock the universal Feeling of Mankind, and would engage the public Sympathy on the Side of the Delinquent against the Law."

In England there are Means, also dependent on Procedure, by which the public Opinion of the Severity of the Law has been expressed, and many of the important Changes in our Criminal Law have been called for by the People.

In Hungary and in other Cases of Felony the greatest Reluctance had been manifested to carry the Law into effect. Prosecutors would not stir. Witnesses withheld their Testimony, and Jurors committed pious Perjury; and in France such Alterations have taken place that by the Change of Procedure alone the whole Penal System has been varied, and perhaps tempered, to suit the Feelings of the Nation.

The Code Penal of 1810 was chargeable with an unreasonable Degree of Severity throughout, and the Consequence was that from the Time the Juries were freely chosen they steadily refused to assist in executing the harsher Part of the Law, and a persevering Warfare was waged between the Law and public Opinion.

Before the last French Revolution, popular Feeling, though backed by the Intelligence of the Community, was little attended to; but within a few Months after the Change of Dynasty a new Law was passed, which shall hereafter be particularly noticed, the grand Feature of which is a Provision authorizing the Jury to declare the Existence of attenuating Circumstances, thereby compelling the Court to relieve the Punishment a Step, and conferring on it the Option of reducing it two. Thus in France by Procedure alone a most important Change has been effected in the whole Organization of the Law.

This Explanation of the Importance of Procedure will serve to show that until we know what System the Law Commissioners intend to recommend we cannot sufficiently examine or estimate the particular Provisions of the Code which has been framed.

By the foregoing Observations an Attempt has been made to show that what was contemplated and commanded by Parliament has not been complied with; that until that should be done it was not intended to legislate by substituting One Law for all the Systems which now prevail in India; that the Governor General in Council had not legal Power to dispense with the Directions contained in the Act of Parliament, which in fact had created their own Authority; that the Letter of the Law Commissioners neither affords sufficient Information nor assigns any sufficient Reason for the Adoption of the proposed Code; and that until a Code of Procedure shall be framed the Value or the Character of the Penal Provisions cannot be duly estimated.

In offering any Suggestions respecting the Code framed by the Law Commissioners it is not intended to attempt a Criticism of their Work, or of its Arrangement or particular Provisions; but it is submitted, that there is an inherent Difficulty in framing any System of written Law,—a Difficulty which has not yet been overcome in any of the Specimens of Legislation hitherto produced by Skill and by Labour, that there is Reason to apprehend that it is impracticable to frame any Digest of Penal Law suitable to all the Colours, Castes, and Creeds of British India; and that all the Difficulties that have been opposed to perfect and permanent Legislation in Europe and America abundantly exist in this Country.

Particular Allusion will be hereafter made to the "Definitions and Illustrations" contained in the proposed Code, but chiefly for the Purpose of showing that the Law Commissioners profess to entertain Expectations from this Portion of their Labours the Fulfilment of which all Experience would seem to contradict.

The Law Commissioners, in their Letter already quoted, observe, that they have compared their Work with the most celebrated Systems of Western Jurisprudence, as far as the scanty Means of Information which were accessible to them in this Country enabled them so to do; that they had derived much valuable Assistance from the French Code, and from the Decisions of the French Courts of Justice on Questions touching the Construction of that Code; and that they had derived Assistance still more valuable from the Code of Louisiana prepared by the late Mr. Livingstone.

It may therefore be presumed, that although they have not chosen any System of written Law as an exact Model, they have been influenced and assisted in framing their Digest by the Comparison which they have thus acknowledged to have made.

The Means of Information on Subjects of Legislation, it is to be lamented are very scanty in this Country; but if they were more accessible it is not certain that many Men can be found in India capable of using such Information to the best Advantage, or who are sufficiently versed in the Science of Law-making.

Persons who have been attentive Readers and Observers of what has been written in respect of Law Reform during the present Century may be enabled to form an Opinion of a general Nature on this important Subject; but to come to a just Conclusion respecting the Advantages of even modified Codification, much Leisure, Industry, and Patience, and very considerable Information, are indispensably necessary.

The Term *modified* has been adopted, because in the Controversy that formerly prevailed in England Codification was frequently treated as entirely *changing* the existing Law; but latterly it seems to have been considered that *codifying*, or Law-digesting, does not necessarily imply Law-making, or even materially altering.

It is admitted also that few English Lawyers, especially those who are practical, take any interest in or possess the requisite Knowledge on Subjects of Legislation. A few Exceptions, their legal Education rarely travels beyond the short Limits of a particular

particular Department, even of their own Law; and it has been remarked that even in Parliament, neither their Habits nor their Experience fit them to become legislative Regenerators.

In Germany, a Jurisconsult is rather a Professor of Jurisprudence than a Practitioner, and has at his Fingers Ends every System of Judicial Metaphysics, ancient and modern; but in England Nineteen Lawyers out of Twenty "have never given a Thought to the Theory of that vast Machine of which they are little more than the working Engineers, " who supply the Fuel, and occasionally perhaps oil the Pistons and Axles."

For these Reasons it appears to be a very bold Undertaking to offer any decided Opinion on the momentous Subject of Legislation for all British India, and therefore no Observations that can tend to impugn the Opinion or to depreciate the Work of the Law Commissioners ought to have Weight unless founded on Experience or sustained by Authority.

In order, therefore, to form a correct Judgment whether any Digest of written Law is likely to be suitable to British India, it will be necessary to consider how far the Systems of Western Jurisprudence have produced the Benefits which were expected from them; to what Extent the French Codes have fulfilled the Expectations which were entertained when they were framed and promulgated, whether the Ability with which they were constructed, or the Clearness of their Provisions, has rendered the Construction of the Courts less necessary than formerly, or has in any Degree diminished the Amount of forensic Publications; whether the Science or Labour of Mr. Livingstone enabled him even to approximate towards Perfection in Law-making; and whether from the Labours of Law-makers in our own Country, in ancient and modern Times, there is any just Reason to expect that a System of written Law can be framed for India which shall be exempt from the Difficulties which Experience in all other Countries has shown to exist.

It may be necessary, in the first instance, to refer to what was written and published about the Time of the Codification Controversy in England; and it should be remembered that the Discussion there commenced later and terminated sooner than on the Continent of Europe. The Works of Bentham, and the Writings of Park, of Humphreys, and of Butler, and a few Criticisms in the Law and literary Periodicals of the Time, are all to which Access can be readily had in India; and as it was not generally known, until the Digest of the Law Commission was criticised in the Newspapers, that a Penal Code was even in preparation for the whole of British India, Works that might have shed Light on this important Subject have not been procured from Europe.

The Writings of Bentham are very generally known; but although he has many Disciples in India, who profess to be disposed to promote "the greatest Happiness of the greatest Number," it may be doubted whether the Law Commissioners have been altogether disposed to imitate the Example that he has set to his Followers. It is manifest that the Law Commissioners have exhibited a Willingness to see established an "all-comprehensive Code," but the *Rationale* which Bentham (in his Letters to the Count Torens on the proposed Penal Code delivered in by the Legislative Committee of the Spanish Cortes in 1821,) so strongly recommended has not been interwoven in the Code proposed by the Law Commissioners; yet this *Rationale* was considered by Bentham "the most conclusive Test of appropriate Aptitude."

It will hereafter be noticed, that the Law Commissioners have adopted One of the most remarkable of the Opinions of Bentham; but first it may be proper to inquire what has been attempted on the Continent of Europe to establish clear and permanent Systems of Law, and what Degree of Success has attended the particular Form of Legislation which has been chosen by the Law Commissioners.

Notwithstanding the Benefit that had been anticipated from the Codes Napoleon, it has been declared by Mr. Butler, One of our most intelligent Lawyers, that the "Procedure Civil has completely confounded and paralyzed all the Judicature of France;" yet this and the other Codes had been framed by the most enlightened Jurists of the Empire; and every Foreign Jurist who has written on the *working* and the Consequences of these Codes seems to acknowledge that the present Bulk of the French Law is become enormous; that it immeasurably exceeds the Size of the Codes; and that it is still increasing.

Mr. Tournier (who has published a Translation of Lord Bacon's "Universal Law") has thus described the French Codes:—"The Laws which have been made in France since the French Revolution are only incoherent Heaps of Articles mixed up together; they are Comments, not Explanations; Contradictions, not Repeals; References, not Substitutes."

To this it may be added, that in April 1832 the Law which received the Royal Sanction was the Fourth great Experiment in this very difficult Department of Legislation which had been tried in France within the last Fifty Years.

A Civil Code, a Commercial Code, and a Code of Civil Procedure have been sanctioned, but not introduced, in the Netherlands; but the Projects of a Criminal Code and a Code of Criminal Procedure have been entirely rejected. These Codes have been noticed by M. Meyer (who is one of the first Continental Jurists) in the following manner:—"it suffices for me to say, that they are all below Criticism."

The Code Commission was prepared by the late Mr. Livingstone, who is favourably mentioned by the Law Commissioners. He was considered to be one of the most learned and enlightened Legislators of modern Times. He had before him the numerous Codes of Europe that had been previously framed; and he had great and peculiar Advantages in digesting his Work, and in adjusting it to the Condition of a People with whose Character, Morals, and Condition he was intimately acquainted; yet we find that the Law Commissioners themselves have been under the Necessity of combating his Opinion on many very important Points.

Some of the Difficulties which Mr. Livingstone found to exist in framing "precise and accurate Definitions" will be hereafter noticed. This Task has also been attempted by the Law Commissioners in the proposed Code; and on their Performance of it some Observations will be hereafter submitted.

When Discussions arose in England respecting the best Mode of reforming the Law, the Opinion of Lord Bacon was quoted for and against Codification. It was asserted that he had pointed out "Two Methods of correcting the incongruous and overwhelming Mass of Laws; the one, by improving what exists, by making Alterations and Additions; the other, at once by abrogating the old Law, and by creating a new and uniform System;" and it was contended by the Advocates for Codification, that Lord Bacon had recommended the latter Mode, and some of his Aphorisms were quoted, or rather garbled, to support that Position; but it was afterwards demonstrated that this great Man had not given his Sanction to the Abrogation of the old Law, or to the Creation of a new System. The following quotations form Part of what Lord Bacon has left us on this very important Subject:—

"In all Sciences they are the soundest that keep close to Particulars, and sure I am that there are more Doubts that rise upon our Statutes, which are a Text Law, than upon the Common Law, which is not a Text Law; but, however that Question be determined, I dare not advise to cast the Law into a new Mould. The Work which I propound tendeth to pruning and grafting the Law, and not to ploughing up and grafting it again, for such a Remove I should hold indeed for a perilous Innovation."

Again, in noticing the possible Consequences of new-moulding the Law, "and the turning the Judges, Counsellors, and Students of Law to School again, and making them to seek what they shall hold and advise as Law," Lord Bacon observes, "if the Law were new-moulded into a Text Law, Men must be new to begin; that is One of the Reasons for which I disallow that Course. But in every Way that I shall now propound the entire Body and Substance of the Law shall remain, only discharged of idle and unprofitable or hurtful Matters, and illustrated by Order and other Helps towards the better Understanding of it and Judgment thereupon."

The Opinion of a Law Reformer of modern Times shall next be submitted.

In 1819 Sir James Mackintosh moved for and obtained a Committee of the House of Commons "to consider of so much of the Criminal Law as relates to Capital Punishment in particular." In his Speech on that Occasion he said "I do not propose to form a new Criminal Code. Altogether to abolish a System of Law admirable in its Principles, interwoven in the Habits of English People, and under which they have long and happily lived, is a Proposition very remote from my Notions of Legislation." "The main Point of the Reform which I should propose would be to transfer to the Statute Book the Improvement which the Wisdom of modern Times has introduced into the Practice of the Law."

These Opinions of the best Mode of reforming existing Laws may justify a Belief that the Law Commissioners might have found sufficient Materials in the Laws that have long prevailed in British India to have admitted of their "pruning and grafting," and that it was not necessary to "plough up and graft again," or, in other Words, to new mould the Law; and it may admit of reasonable Doubt whether Laws which may be well suited to the continental Nations of Europe, or to a Nation that has in a great degree adopted the Jurisprudence of the Country of which she was a Colony, are likely, unless subjected to great Modification, to produce any Benefit to India. If indeed any Law can be grafted in the Institutions of the People, subject to British Government in this Country, the English Law, as administered at the Presidencies, seems to be the most natural Stock from which the Graft should be taken, especially if British Capital and British Subjects are to be introduced, and tempted to promote the Improvement of India.

There seems to be a wide and rational Distinction between Innovation and Improvement, although they have sometimes been confounded as nearly synonymous, and there is also a vast Difference between the Introduction of an entire and foreign Body of Laws as of absolute Authority, and the merely selecting from it such Portions as may be consonant with the general Spirit and Character of the System into which they may be infused. But although the Adoption of an entire new System may not be desirable or necessary, this is far from being a valid Argument against the Adoption of such Rules as may, modify, correct, and improve the existing System.

"There are many Substances which, taken alone and in large Quantities, are very violent Poisons, and which are nevertheless of great Use and Efficacy in Medicine, when administered with Judgment and Precaution, more especially when combined with more innocent Remedies. The same Principle undoubtedly holds good with

"respect to Jurisprudence. However nearly the Institutions of particular People may approach to Perfection, another Nation of different Habits and Character would never find its Account in adopting them without considerable Modification, and many of them indeed, like Trees which flourish only in an Atmosphere of a certain Temperature, may not admit of being transplanted into a different Climate." But although we may not be enabled to transplant or cultivate them *all*, it is no Reason why they should be *all* prescribed.

The Spirit of the foregoing Observations may, it should seem, be applied to Legislation suitable to India; and although its existing Institutions may not approach to Perfection, it nevertheless may not be wise to impose on the People an entire new Body of Law, for which, from their Education, Habits, and Character, they are not yet prepared.

It may have been considered that the Law which is now administered in the Supreme Courts of the Presidencies, and which, generally speaking, has been found sufficient for the Population thus located, is in many respects unfit to be transferred to the Provinces subject to the British Government; but, on the other hand, it may be observed, that, so far as the 4th, 10th, 14th, 17th, 18th, 19th, 24th, and 25th Chapters of the proposed Code can be comprehended, the Penal Law of England applicable to the Subjects of these Chapters respectively might, with certain necessary Modifications, be made suitable to such of the Indian Provinces as may contain the same Classes and Descriptions of People as usually reside at the Presidencies; and the Judges of the Provincial Courts, if this should be done, would find many Facilities in understanding and administering a Law to be thus framed, which it may be apprehended will be denied to them if the proposed Code shall become the general Law of India.

It may be urged, that the View taken of the Law to which Europeans and others at the Presidencies have been accustomed is too partial, and that the Provisions of the proposed Code have not been sufficiently studied and considered; and it may be conceded that the Observations now penned are tinged by individual Feeling, and by a Preference for that Law the Administration of which in India has been long experienced. It is also possible that an Impression, which has been already avowed, respecting the Inutility and Impracticability of Codification, may have caused the Labours of the Law Commissioners to be viewed with less Regard than they really deserve; but with these Acknowledgements a very strong Conviction is entertained and may be expressed, that these Labours would have been attended with a much better Result if, —instead of looking "to the celebrated Systems of Western Jurisprudence" for Information on this important Subject, or from Assistance from the French Code, from the Decisions of French Courts of Justice on Questions touching the Construction of that Code, or from the Code of Louisiana,—the Law Commissioners had been satisfied with such a System of Law as it is humbly considered might have been framed from the English Penal Law, from the existing Regulations of the Three Presidencies, and from such Information as might have been collected respecting the Religion, the Morals, the Character, the Habits, and the Condition of the People in the Provinces. But whether any One System of Law could have been made suitable to all the different Castes, Classes, and Descriptions of Persons in India subjected to British Rule is a Question which admits of very considerable Doubt.

Some of the Reasons avowed by the Law Commissioners for framing the proposed Code will now be noticed, and that their Meaning may not be misrepresented a further Part of their Letter to the Governor General in Council shall be quoted. After stating that their Reasons for those Provisions which appear to require Explanation or Defence would be found appended to the Code in the Form of Notes, they state as follows:

"One Peculiarity in the Manner in which this Code is framed will immediately strike your Lordship in Council; we mean the copious Use of Illustrations. These Illustrations will, we trust, greatly facilitate the Understanding of the Law, and will at the same Time serve as a Defence of the Law. In our Definitions we have repeatedly found ourselves under the Necessity of sacrificing Neatness and Perspicuity to Precision, and of using harsh Expressions which would convey our whole Meaning, and no more than our whole Meaning, and such Definitions, standing by themselves, might repel and perplex the Reader, and would perhaps be fully comprehended only by a few Students after long Application; yet such Definitions are found, and must be found, in every System of Law which aims at Accuracy; a Legislator may, if he thinks fit, avoid such Definitions, and avoiding them he will give a smoother and more attractive Appearance to his Workmanship, but in that Case he flinches from a Duty which he ought to perform, and which somebody must perform. *If this necessary but most disagreeable Work be not performed by the Lawgiver once for all, it must be constantly performed in a rude and imperfect Manner by every Judge in the Empire, and will probably be performed by no Two Judges in the same Way.* We have therefore thought it right not to shrink from the Task of framing these unpleasant but indispensable Parts of a Code, and we hope that when each of these Definitions is followed by a Collection of Cases, and of Cases which, though at first Sight they appear to fall under it, do not really fall under it, the Definition, and the Reasons which led to the Adoption of it, will be readily understood. The Illustrations will lead the Mind of the Student through the same Steps by which the Minds of those who framed the Law proceeded, and may sometimes show him that a Phrase that may have struck him

~~making much, or a Distinction that he may have thought idle, was deliberately adopted for the Purpose of including or excluding a large Class of important Cases."~~

"There are Two Things which a Legislator should always have in view, while he is framing Laws; the one that they should be as far as possible precise, the other that they should be easily understood. To unite Precision and Simplicity, in Definitions intended to include large Classes of Things, and to exclude others very similar to many of those which are included, will often be utterly impossible. Under such Circumstances it is not easy to say which is the best Course. That a Law, and especially a Penal Law, should be drawn in Words which convey no Meaning to the People who are to obey it, is an Evil; on the other hand, a loosely-worded Law is no Law; and to whatever Extent a Legislature uses vague Expressions, to that Extent it abdicates its Functions, and resigns the Power of making Law to Courts of Justice"

"On the whole we are inclined to think that the best Course is that which we have adopted. We have in framing our Definitions thought principally of making them precise, and have not shrunk from rugged and intricate Phraseology when such Phraseology appeared to us to be necessary to Precision. If it appeared to us that our Language was likely to perplex an ordinary Reader, we added as many Illustrations as we thought necessary for the Purpose of explaining it. The Definitions and enacting Clauses contain the whole Law. The Illustrations make nothing Law which would not be Law without them. They only exhibit the Law in full Action, and show what its Effects will be in the Events of common Life."

"Thus the Code will be at once a Statute Book, and a Collection of decided Cases. The decided Cases in the Code will differ from the decided Cases in the English Law Books in Two most important Points. In the first place our Illustrations are never intended to supply any Omission in the written Law, nor do they, even in our Opinion, put a strain on the written Law. They are merely Instances of the practical Application of the written Law to the Affairs of Mankind. Secondly, they are Cases decided, not by the Judges, but by the Legislature, by those who make the Law; and who must know, more certainly than any Judge can know, what the Law is which they mean to make."

"The Power of construing a Law in Cases in which there is any real Reason to doubt what the Law is amounts to the Power of making the Law." * * *

"The Publication of this Collection of Cases decided by Legislative Authority will, we hope, greatly limit the Power which the Courts of Justice possess of putting their own Sense on the Laws. But we are sensible that neither this Collection nor any other can be sufficiently extensive to settle every Question which may be raised as to the Construction of the Code. Such Questions will certainly arise, and, unless proper Precautions be taken, the Decisions on such Questions will accumulate until they form a Body of Law, of far greater Bulk than that which has been adopted for the Legislature."

The Law Commissioners next declare that "while the Judicial System of British India shall continue to be what it now is, consisting of Eight Chief Courts, each independent of the others, and each at liberty to put its own Construction on the Law, there will inevitably be in the Course of a few Years a large Collection of Decisions diametrically opposed to each other, and all of equal Authority." The Law Commissioners add, that "whether the present judicial Organization be retained or not, it is most desirable that Measures should be taken to prevent the written Law from being overlaid by an immense Weight of Comments and Decisions"

The Suggestions offered to the Governor General in Council by the Law Commissioners to prevent the written Law from being "overlaid" will be noticed hereafter; but at present it is proposed to consider such Parts of the Letter last quoted as particularly refer to the "Definitions and Illustrations," the Advantages which the Law Commissioners profess to respect from the "Peculiarity" in the Manner of constructing their Code, and from the Publication of their Collection of Cases decided by Legislative Authority.

The Object of the Law Commissioners seems to have been by Definitions and by Illustrations of Definitions to give to the new Law that Simplicity, Clearness, and Certainty which shall render Construction and analogical Interpretation unnecessary; and from the Passages quoted which have been underlined it appears that they intend to expel from the Penal Jurisdiction of India what has been called by Bentham "Judge-made Law."

If the Law Commissioners have in fact performed what they intended, they have been more successful than the Legislators of the Western World; and without venturing to examine any of the Definitions or Illustrations of the Commissioners (except hereafter in the single Instance of Theft), it may be useful to mention some of the Difficulties that have hitherto been found opposed to the Attainment of the Two Things which the Commissioners think a Legislator should always have in view.

The Law Commissioners appear to have been fully aware of the Difficulties with which they have to contend; and it should seem that these are Difficulties inseparable from

* See the Questions which have been submitted to the Court of Cassation on the Definition of Theft in the French Code, Page 65.

Code-making, and therefore they afford the strongest Argument against the Course of Legislation which seems to have been chosen; but before we consider the Difficulties which have been experienced in framing Laws of a clear and certain Nature, or in devising precise and simple Definitions, and before the Expectations of the Law Commissioners, that the "necessary but disagreeable Work" which they have performed will prevent the Performance of it "by Judges in a rude and imperfect Manner," shall be considered, the Opinions of Bentham on this particular Subject will be noticed, the Mischief of which he also proposed to remedy by Codification.

He maintained that all the Faults, all the Abominations of English Jurisprudence, arose from Law having been made by Judges instead of Legislators; that it was the Business of Judges only to pronounce the Law which Legislators concerted; that a Text Law might and should be framed, in which "saving the necessary Allowance for Human Weakness, no Case that could present itself should find itself unnoticed or unprovided for."

Now, others who have written on this Subject have called to mind that Seventy Years before Mr. Bentham published his Opinions, Frederick the Great of Prussia had made the like Discovery of the ill Condition of the Law, and had not only projected but executed the Remedy proposed by Mr. Bentham, and with the same Antipathy to *Judge-made Law*, and the same Belief in the All-sufficiency of *Legislator-made Law*. The express Directions of Frederick were, "that his new Code might be simple, popular, and so complete that the Judges might find in a precise Text of Law the Decisions of each individual Case," and "His Majesty prohibited all analogical Interpretation by the Judges of the Rules contained in the Code, and ordered that in every Case for which the Code did not provide, Application should be made to the Legislative Authority."

Something very like the Conclusion of what is last quoted seems to be suggested by the Law Commissioners, as will be shown hereafter

Now the Prussian Project, "though backed with all the *Eclat* of Frederick's Reign, terminated its Existence in less than Thirty Years, and the First Step that accompanied the Publication of the new Prussian Code was the Restoration to the Judges of the Right of interpreting the Law."

By the System established in France in 1791 a Jealousy of Judges and Judge-made Law, and of the exaggerated Evil of a discretionary Punishment, was exhibited; the Duration of the Punishment to be applied to each Offence was regulated with an exact Precision; and it was directed that after the Declaration of the Jury, Functions of the Judges should be restricted to the mechanical Application of the Law.

Now, although nothing short of positive Necessity had in France been thought sufficient to excuse the Legislator for devolving any Portion of his peculiar Province, the Fixation of Punishment, even on the Judges, yet by the new Law to which Allusion has been made the Fixation of Punishment is now devolved on popular Feeling.

Before the Period last referred to, the talented Jurists who composed the Project of the Code Napoleon in their *Discours preliminaire*, exposed in the most eloquent and profound Manner "the Absurdity of supposing that a Body of Laws could be framed which would provide for all possible Cases, and at the same Time be understood by the lowest Citizen," and they boldly declared that the Details of Law "must necessarily be abandoned to the Empire of Usage, the Discussions of the learned, and to the Decision of the Judges"

The most intelligent and philosophical Jurists of Germany, of Holland, of Belgium, of Switzerland, and of Russia have been engaged almost unceasingly in some or other of these Countries, for Half a Century, on the Construction, Discussion, and Reconstruction of Codes; and One of the greatest Difficulties they have had to encounter has been, "to draw the Line between the respective Functions of Legislators on the one hand, and Judicial Jurisprudence on the other," and it is affirmed by an able public Writer, "that in the Result of all that Discussion and Experience those Codes had ultimately fallen into most Disesteem which attempted most to supplant the Functions of the Judges, and to anticipate the Details of Application."

"General Rules," said Lord Mansfield, "are wisely established for attaining Justice with Ease, Certainty, and Despatch, but the great End of them being to do Justice, the Court are to see that it is really attained." In a well-written Life of this great Judge the Author has thus expressed himself.— "As no Body of Laws, however excellent, and however copious, can possibly foresee or provide for the countless Variety of Circumstances that are to be made the Occasions of Litigation, every Judge must of Necessity be more or less frequently obliged to take upon himself in some degree the Office of Legislator, and thus Duty Lord Mansfield was called upon to perform far oftener than any Magistrate who has presided in the English Courts."

The latter Observations will tend to show that in England it has not been considered necessary to resort to legislative Authority when any Doubt has been entertained of the Law, as seems to be recommended by the Law Commissioners, or that the Legislature should from Time to Time be invoked "to limit the Authority which Courts of Justice possess of putting their own Sense on the Laws."

Some of the most remarkable Instances that have been experienced in England, showing the Difficulties of framing any Law that is likely to have the clear, precise, and simple

simple Character which the Law Commissioners have sought to accomplish in the proposed Code, will presently be noticed; but independently of the Difficulties which every Law may present, as expressing obscurely or imperfectly the Nature of the Events or Circumstances which are to create the Duties imposed by it, or the Extent of such Duties, new Laws, as such, by the mere Circumstance of their *changing the established Law*, present a peculiar and very obstinate Class of Difficulties.

Such Difficulties have been frequently experienced on the Continent of Europe, and have occupied the Attention of Jurists, especially in France; although in England little Attention seems to have been hitherto directed to this Consequence, of innovating on a comprehensive Scale.

It should seem that One of the principal Difficulties likely to attend a new Law will be, the Loss of the important Advantages derivable from the Decisions and Wisdom of other Judges who have had to deal with similar Law and Facts, and whose Reasoning generally will assist in the Application of Principles to kindred Cases*, and if the proposed Code shall pass into a Law it may be confidently predicted that, although its Provisions "may prevent the written Law from being overlaid by an *immense Weight of Comment and Decisions*," the References recommended to be made to the Law Commissioners, if that Commission shall be a permanent Body, to solve the Doubts entertained by Judges on Questions of Construction, will afford to that Commission abundant Employment.

Some of the many Instances in which Legislators in England have failed to accomplish that which to some has appeared most easy, but which, in the Opinion of others, all Experience proves impracticable, shall now be adduced.

It is a well-known Fact that the Statute Law of England has been the Subject of much more Doubt, and has been found much more difficult to settle by Decisions, than the Common Law; witness the Statute of Frauds, said to have been drawn by the best Lawyers of the Day, and the innumerable Questions that have arisen on the Construction of each of its Sections.

If the most studied Portions of the new Bankrupt Act, passed in 1825, on which an unusual Amount of Skill and Labour was bestowed, shall be referred to, it will be found that this Statute has also given rise to much Difficulty of Construction. It moreover contained an important and appalling *structural* Difficulty, which, it is believed, had never presented itself to the Minds of Lawyers either in or out of the Houses of Parliament. The Consequence has been, that "it has been necessary to obtain a Judicial Decision upon almost every Case which has occurred in which the Provisions of the new Act have come in contact with the Combination produced under the old Laws, in determining the Applicability of the former." The Mass of Confusion and, as it is termed, "arbitrary Decision," which has accumulated on the transitive Operation of this Act, will be found in numerous Reports of decided Cases.

Again, however, it may be asserted, that Language perfectly exclusive of Doubt *should be employed* in written Law. It has been found that Lord Tenterden was unable to frame an Enactment of Eight or Ten Lines without leaving the Meaning open to a Multitude of Doubts; and yet without this Enactment the Statute of Limitations might have been repealed by Judicial Constructions.

After these Instances, it is scarcely possible to question the Opinion of Lord Bacon, who has declared that there is something in the Nature of Language, or some essential inherent Difficulty in Law-making, which renders Imperfection inevitable.

It may be urged, however, that the Instances adduced apply to the *Civil* Branch of the Law; but what was done about the Time of the Consolidation of the *Criminal* Law of England by Sir Robert Peel and Lord Lansdowne should be borne in mind; and if what the Law Commissioners say is yet required to be done to reform that Law shall be considered, it will be admitted that similar Difficulties are opposed to the making of Criminal Text Law.

In 1827, when Sir Robert Peel introduced the Bills which afterwards became the 7 & 8 George IV. c. 27, 28, 29, 30, and 31, he stated that they had all been submitted to the then Chief Justice of the King's Bench, to Mr. Justice Bailey, Mr. Justice Holroyd, Mr. Justice Burrough, Mr. Justice Gaselee, and to Mr. Baron Hulloch, and it has been confidently stated that there was scarcely a Clause in the Draft of these Bills which had not undergone some sort of Amendment by Lord Tenterden. Sir Robert Peel then declared, that it had been his good Fortune to profit by the willing Assistance of *Mr.* who yielded to none in respect of general Acquirements, of profound Knowledge in Principles of Law, or to Experience in its Practice, that he owed the Preparation of these Bills to those Gentlemen by whose Labour and Skill the Jury Act had been prepared, and to Mr. Gregson, a Barrister of high Eminence on the Northern Circuit; that the Bills had been submitted to the Chief Justice and to the other Judges (who have been named); and that in the Profession of the Law generally he had found the utmost Readiness to co-operate in the Work which he had undertaken.

* General Rules can never be laid down accurately at first; Experience only can point out their proper Qualifications, Exceptions, and relative Bearings, 48. Experience we possess in the Volumes of judicial Controversies to which the unwritten System has given Birth. If the Mode of Expression is altered, the Quality of Fixedness or settled Interpretation is lost.

What further passed on this Occasion with respect to the Law of Theft will be noticed hereafter; but the important Assistance which Sir Robert Peel then admitted he had received must show that he was persuaded that very much had been accomplished; not indeed with the Design of framing a new Code or Digest, but to mitigate, improve, amend, and consolidate the ancient Law of the Land.

If it shall be admitted that what was then done was not done rashly or unskilfully, and if at the Period when Lord Brougham intrusted the Task of Consolidation to the Criminal Law Commissioners, Nine Tenths of the practically operative Part of the Criminal Statute Law of England had been already consolidated (as has been asserted), may not unlearned Persons be surprised by the Statement in the Letter of the Law Commissioners, that this "artificial and complicated System has been pronounced by a Commission composed of able and learned English Lawyers to be so defective that it can be reformed only by being entirely taken to pieces and reconstructed."

Surely, if this Opinion be well founded,—if the System of Penal Jurisprudence in England is so defective, and so incapable of being amended or reformed,—and if it cannot afford any Aid in legislating for the People of India, the Wisdom and Labour of our Ancestors, and the Talent and Industry of all modern Legislators and Jurists, have been singularly deficient and misapplied, and if there be some essential inherent Difficulty in Law-making which makes Imperfection inevitable, it may be apprehended that even the Law Commissioners have not performed their Work so as to render Reconstruction of their Code unnecessary.

It would be idle to offer any Eulogium on the English Criminal Law, which eminent Jurisconsults have pronounced to be "remarkable for being simple without being voluminous in Bulk," and of which Sir James Mackintosh has spoken in Language already quoted; but, however this Law may have been repudiated by the Law Commissioners as unfit to be adopted, either as a Model or for Selection, it is believed that there are not many English Lawyers who consider it to be so defective that it can be reformed only by being entirely taken to pieces and reconstructed.

The vast Difficulty that exists in drawing the Line between Functions of Legislative and Judicial Jurisprudence must have been perceived from the previous Observations, and whatever Belief the Law Commissioners may have formed on the Subject, and, however they may have aimed to perform a Work which otherwise "would be imperfectly performed," it is apprehended that the Public will be satisfied that Details of Law must be left to Usage, to the Discussions of the learned, and to the Decisions of the Judges.

The Consequences which are likely to follow from the Reports and References which the Law Commissioners have recommended to be made to the Legislative Council, and by them to the Law Commissioners, in order that the written Law may be relieved "from being overlaid by an immense Weight of Comment and Authority," may be anticipated. The Reports recommended to be made by the Judges to their official Superiors touching Doubts on Questions of Construction, and which, if not absolutely "unreasonable," are to be periodically reported by the high Judicial Authorities to the Legislature, and then referred for Examination to the Law Commission, will not only occupy the complete Attention of the most learned and industrious Body that can be chosen, as long as the proposed Law shall prevail, but the Additions that must be made to the Code, if the Suggestions of the Commissioners shall be adopted, will very soon exceed in Bulk the Code itself, with its Explanation, Illustrations, and Notes.

It is also deserving of Remark, that Questions that may arise are not intended to be reported to the Government, if "*obviously unreasonable*." Now, to determine on this Reasonableness or Unreasonableness, some competent Authority of an appellate Nature must be created and exercised, and Doubts may be entertained of the Necessity or Expediency of converting the Law Commissioners into a permanent Court of *dernier Resort* for construing and deciding difficult Questions of Laws.

The general Remarks that have been submitted may afford some Explanation of the Difficulties which the Law Commissioners have had to encounter in performing their Task; and it is conceived that the remarkable Instances of Failure in Legislation which have been adduced may justify a Belief that the Advantages professed to be expected from the proposed Code are not likely to be fully realized. It will, however, be consolatory to the Law Commissioners to find, that if they have failed they have failed in common with Legislators, ancient and modern, of the most enlightened Nations.

It is now proposed to offer a few Observations on that Part of the Letter of the Law Commissioners already quoted which relates to the "Definitions" which they have framed, their Objects in framing them, and the Illustrations of the Definitions, "and to show that this *Mode* of Legislation is no longer held in general Estimation."

The Commissioners admit that "to unite Precision and Simplicity in Definitions intended to include large Classes of Things, and to exclude others very similar to many of those which are included, will often be utterly impossible." Under these Circumstances they add, "it is not easy to say what is the best Course;" but they, again point to the great Evil, which seems to be ever present to their Mind, and which they apprehend, from a loosely-worded Law, and remark that, "to whatever Extent a Legislature uses vague Expressions, to that Extent it abdicates its Functions, and resigns the Power of making Law to the Courts of Justice."

Different

Different "Definitions" which have been introduced into Codes relating to the Crime of Theft will be hereafter noticed, as illustrating the Subject now under Consideration; and the Sentiments of learned Persons, on the insuperable Difficulty of constructing Definitions so as to ensure Clearness, Precision, and Certainty, shall also be mentioned.

The Criminal Law Commissioners in England, in their First Report, have explained this Difficulty, and have exhibited a Specimen of the Mode by which they propose to with it. They avow that they conceive it to be the principal Object of a Digest, "by prescribing a certain and plain Rule, to do away with the Necessity of balancing legal Authorities;" but they afterwards admit "that many general Definitions, as well ancient as modern, of particular Offences, are to be found in the Books, and that those Definitions frequently tend to throw into Controversy rather than to fix the Limits of Offences which they profess to define."

To the Code of Mr. Livingstone he has annexed a Book of "Definitions," the great Utility (says he) of this Part of the System is obvious, provided it has been executed with the necessary Precision. It is that Part which has been found the most difficult. *The most intense Application was necessary to define Terms the most commonly used, but to which many of those who employed them affixed Ideas more or less materially different.* This Difficulty has increased by the Nature of the Language, which very frequently does not afford Terms sufficiently precise to avoid Difficulty even in the Periphrase used in the Definitions, *so that in many Instances I have been under the Necessity of defining the Words employed to explain others, and in order to approach nearer to that Certainty, so necessary in all Laws, recourse has been had to Corollaries, Examples, and Illustrations, as well in the Body of the Laws as in the great Book of Definitions.* This is also a new Feature in Legislation, and, like many others that had not received the Sanction of Experience, it was made the Subject of solicitous Reflection before it was adopted.

In a Work published by M. Rossi (who stands in the First Rank of Judicial Writers on the Continent of Europe) on the Subject of *Definitions*, the following Passages will be found which pointed to the Difficulty which Mr. Livingstone acknowledges to have experienced.

After making certain Observations on the revolting and indecent Expressions contained in some Laws, M. Rossi says, "these are not the Vices of Redaction most to be feared at present," and then proceeds thus: "But the more the Mind is developed, the more Force and Vigour it acquires, and the greater is its Tendency to generalize, to collect a Crowd of particular Facts under the same general Law, to express the Generalization by some Words which appear fitted for embracing every thing. Hence the Danger of falling into Vagueness and Obscurity, hence the metaphysical Expressions placed in Laws, without reflecting that, even supposing these Expressions to be just and precise in themselves, they would never be so in the Eyes of the Public, who have not followed the same intellectual Process as the Man who employs them. These Formulæ, which are but Results placed in a Law where they are preceded by nothing introductory or explanatory of them, are for the Public merely what Algebraic Formulae are for a Man destitute of Mathematic Knowledge. Will he comprehend the Formulæ because he knows the Letters of the Alphabet?—because he knows how to read?—because he expresses good Sense, and even, if you like it, a considerable Quantity of Talent? Ought we to be surprised that, in following such a Mode, *Laws of a dangerous Redaction are obtained*, above all, when we know how imperfect and little familiar to the Mass is the Language of the Sciences, moral as well as political, how it abounds in Terms vague, equivocal, and susceptible of several Significations?"

"Now Common Sense has spoken before the Legislature. It has seen Men in possession, with evil Designs, of the Property of others, and it has called them Thieves. It has seen Men deprive their Fellows of Life, it has called them Murderers, and it has never confounded with them either him who kills an Aggressor to defend his own Life, or him who kills an Animal. What is Theft? What is Murder? All the World knows. Place a Definition instead, the greater Part of the Public will no longer know what you are talking about; and if, as to many Offences, there exists Confusion in the Notions and Language of the Public, we do not hesitate to charge it on the Manufacturers of the Laws, who have confounded Ideas by their Distinctions and arbitrary Classifications,—who have desired to create Definitions, instead of receiving them, —to invent, instead of observing,—to create Symptoms, instead of regulating existing Facts. It is odd to see Legislators gravely giving the Definition of Adultery, and of something worse still. To what end? To the end of explaining their Thoughts. But why, in speaking of Horse-stealing, not give the Definition of Horse. In speaking of Murders committed with Premeditation in cold Blood wilfully, why not define these Expressions? Lastly, why not define each of the Words of which the Definition is composed, and so on?"

"There is then a Point when it is necessary to stop, where this Explanation under the Form of Definition would be no more than a Means of rendering obscure and uncertain that which is clear and certain of itself. Then, why not apply these Observations even to the Definition of the Offence? Why establish the Necessity for Defini-

tions in Law as a general and absolute Rule? What is the Conclusion from these Observations? That there is no immutable Rule to establish; that we must attentively the actual State of Things, and follow, according to Circumstances, the Method which in the different Cases is the most fit to give all the necessary Clearness and Precision of the Law."

These Remarks and Quotations respecting the Difficulty of framing "Definitions," after having particularly considered all that the Law Commissioners have written on this Subject, and especially the First Chapter of their Code, which contains "general Explanations" relating to the Definitions of Offences, "Penal Provisions," Illustrations of such Definitions or Penal "Provisions," and "general Exceptions," respectively seem to lead to One Conclusion, which may be expressed, with a little Variation, in Language which has been applied to the "Definitions and Illustrations" contained in the Code Louisiana.

With the highest Admiration of the Abilities of the Law Commissioners, "many of the Definitions that have been used will rather tend to obscure than to elucidate the proposed Code; and the very Attempt is founded on a radical Misconception of the Duty of Lawmakers, and the Degree of Clearness attainable by them"

The Illustrations used by Mr. Livingstone are however in Form and in Substance very unlike the Illustrations of the Law Commissioners; and, if correctly comprehended, the latter do not appear to be calculated either to facilitate the Understanding of the Law or to serve as a Defence of it.

The Difficulty, if not the Impracticability, of this Mode of Legislation, may be further indicated by adverting to what has been done and recommended in England respecting the Crime of Theft, which is embraced by the 19th Chapter of the proposed Code; and the Remarks and Quotations which shall be submitted relating to this Offence will tend to show that it is almost impossible to frame Definitions or to establish *certain* Rules and *specific* Penalties sufficient to deter Mankind from the Commission of Crime.

When Sir Robert Peel, on the Occasion already referred to, proposed to consolidate and amend the Criminal Law, he is reported to have spoken as follows with reference to the Bill relating to Theft. "I select the Laws relating to Theft, in the first instance, because I consider the Crime of Theft to constitute the most important Class of Crime. There are Acts no doubt of much greater Malignity, of a much more atrocious Character, than the simple Act of Robbery; but looking to the Committals and Convictions for any other Species of Offences, there can be no Question of its paramount Importance in the Catalogue of Offences against Society; and *if the Laws relating to this Class of Offence can be simplified, and united into One Statute, we shall have made a most material Advance towards the Revision of our Criminal Statute Law.*"

After noticing the Criminal Returns for England and Wales in the Year 1825, by which it appeared that Six Sevenths of the various Criminals were charged with Theft, and that there had been during the same Period not less than 40,000 Convictions for Simple Larceny, Sir Robert Peel proceeded thus: "I need say no more to demonstrate the immense Importance of the Crime of Theft, considered as a Class of Crime, and to show the Necessity of establishing with regard to it as clear and intelligible a Law as *it is possible to establish.*"

Sir Robert Peel next observed, that the Statutes then in force relating to Theft amounted to about Ninety two, including a Period of Time extending from the Reign of Henry III. to 6th of George IV.; and that although an Apprehension might be entertained that an Attempt to simplify the Language of these Statutes, to classify their Provisions, and to condense them into One Statute, was a hopeless Undertaking, yet he held in his Hand a Proof that the Undertaking was not hopeless; that the Bill to which he alluded, *in the short Compass of Thirty Pages without making any rash Experiments to curtail the Phraseology of the existing Law, and without the Omission of a single Clause which it was fitting to retain, included all the Provisions of the Statute Law relating to the Offence of Larceny.*

It has been before explained how the Draft of this Bill had been prepared; and the Confidence thus avowed respecting the Value of the great Work which had been accomplished proves that Sir Robert Peel did not expect that the Offence of Theft would so shortly afterwards require to be dealt with by the Legislature.

This Bill passed into a Law, and it is asserted that no Inconvenience or Uncertainty in the Law of Theft has since been particularly felt in England or in Her Majesty's Courts in India, except in the Occurrence of Offences (as certain Cases of Embezzlement and Fraud) the Boundaries of which have hitherto puzzled the ablest Legislators to fix.

The Criminal Law Commissioners, in their First Report, have, however, recommended a general Digest of the Criminal Law of England; and, after stating their Reasons, they observe, that in order "practically to *illustrate* their Remarks" they had extracted from the unwritten Laws relating to Theft such general Rules as appeared warranted by Authority. It is possible that this Example, which had been previously set by Mr. Livingstone, may have suggested to the Law Commissioners the "Illustrations" in the proposed Code already alluded to, but if so there certainly has not been any Attempt at close Imitation.

The Criminal Law Commissioners have particularly noticed in their First Report the Difficulties which result from the mere Want of certain Rules for defining Offences; from

from contradictory Principles and Authorities; from isolated Decisions; and from the Fluctuations of the Common Law and the Adoption of subtle Distinctions; and they have framed a very able Digest of the Common Law relating to Theft.

In order to illustrate their Definition of Theft, which will be hereafter noticed, and the Latitude to be given to some of its Terms, the Digest contains numerous Expositions on the Subjects of Theft; "the Acts of taking and carrying away;" "the Circumstances which make such a taking felonious;" "the Ownership of Property stolen;" and "the taking from the Possession of the Owner;" and it should seem that although the India Law Commissioners must have perused the Report of the Criminal Law Commissioners, and their Digest, with its Explanations, yet no Features of Resemblance between this Digest and the Code proposed for India are easily perceptible.

Whoever will peruse the Observations contained in the First Report of the Criminal Law Commissioners on the Law of Theft will scarcely suppose that anything had been recently done by the British Parliament to reform and improve the Law applicable to this Offence; and if what was attempted in 1825 and 1826 has failed, it seems to suggest an Answer to much that has been urged by the Criminal Law Commissioners in favour of a Digest of the Common Law: for a Reference to what passed in Parliament when this Part of the Criminal Law was considered must abundantly prove that Sir Robert Peel and Lord Lansdowne did not content themselves with a servile Abridgment of the existing Provisions.

"I will proceed" (said Sir Robert Peel on the Occasion before alluded to) "to explain the material Points in which I propose to remedy what appear to be glaring Defects in the Law; for my Undertaking is not limited merely to the Condensation of the Statutes. Where I find any Omission through which notorious Guilt escapes, I propose to supply it; where I find a just Principle, at present only partially applied, I propose to extend it to all the Cases which it ought to include."

The whole Speech of Sir Robert Peel, from which the foregoing is quoted, plainly shows that he and those who aided him had fully considered most of those Defects in the Law of Theft which the Criminal Law Commissioners think can and should be remedied by the Aid of a Digest; and it is said that the Act which then passed proves that Sir Robert Peel went as far as a prudent Legislator could well go in amending the Defects; but he retained in most Instances the existing Phraseology, and he inserted no Definitions in his Act, "for which practical Jurists will certainly commend as speculating Jurists will censure him, because the latter think that all operative Law may be turned into what is termed written Law, and the former know it cannot."

If what was done by the Consolidation Act be compared with what is proposed to be done by the Criminal Law Commissioners, is not the Difficulty of legislating in any Form abundantly exhibited? And if what was performed with the Assistance of the most intelligent Lawyers in England be considered, and that the Law of Theft received their most particular Attention, is it not marvellous that in a short Period of Time it has been discovered that all that was then accomplished is insufficient, and that an entirely new System is required?

This, it is submitted, is alone sufficient to induce the Legislature of India to pause before they adopt a Code to which the People of this Country *must* submit, whether it is or is not likely to strengthen their Affection for the Government, or to promote the general Happiness.

Having submitted Opinions which must appear to be at variance with those propounded by the Criminal Law Commissioners in respect of "Codification," it is proper to add, that the Digest recommended by them has been lauded by Lord Brougham (when Lord Chancellor, in the House of Lords) as "the most wonderful Production of Genius."

The Definition of Theft, as framed by Mr. Livingstone, is also followed by "Explanations," which in Form or Substance do not correspond with the Illustrations of the Law Commissioners; and it has been observed that in the *Explanations* of Mr. Livingstone's Definitions of Theft "the worst Evils imputed to the Common Law of England are discernible, and that the Matter becomes more confused and complicated upon referring to the other Sections of the Code, particularly that which relates to "fraudulent Breach of Trust." It is also said that Three distinct Offences "of Theft," "obtaining Property by false Pretences," and "Embezzlement," are all confounded by the Enactments in the Code of Louisiana.*

If these Observations are just, this Mode of Legislation must have failed in America as well as in Europe, and Definitions and Illustrations have not produced the Good professed to be expected from the Code proposed for India.

The various Definitions of Theft in the Code of the Law Commissioners, in the Digest recommended for England, in the Code prepared by Mr. Livingstone, in the Codes of Wertenburg and Zurich, and lastly in "the Code Napoleon," shall now be enumerated; and from their Diversity the Difficulty of framing any Definition of Crime must be demonstrated.

* The Law Commissioners in their Notes to the proposed Code, p. 76, observe that Mr. C. Livingstone, by laying down a Rule respecting Possession, has annulled the whole Law of Theft, as he had framed it, and has rendered it impossible that Theft can be committed in Louisiana!

The Definitions in the proposed Code of India are as follow :—

“Whoever, intending to take fraudulently anything which is Property, and which is not attached to the Earth, out of the Possession of any Person, without that Person's Consent, moves that Thing, in order to such taking, is said * to commit Theft.”

In the Digest recommended by the Criminal Law Commissioners the following is the Definition :—

“Theft is the felonious taking and carrying away the personal Goods of another.”

In the Code proposed for Louisiana :

“Theft is the fraudulent taking of corporal Personal Property, having some assignable Value, and belonging to another, from his Possession, and without his Consent.”

In the Code of Wertenburg Theft is thus defined :—

“If any one takes into his Possession a moveable Thing, *without the Consent of the rightful Owner*, yet without Violence to any Person, in order to appropriate it to himself illegally, this is Theft.”

In the Code of Zurich the Definition is the same as the last, omitting the Words *underlined*.

The 379th Article of the Code Napoleon I shall next transcribe :

“Quiconque a soustrait frauduleusement une chose que ne lui appartient pas, est coupable de vol.”

On this Definition it has been remarked that the Vagueness of this Description is apparent. The Term *soustraire* is even of more doubtful Signification than *take*; *frauduleusement* is as difficult to define as *feloniously*; and *que ne lui appartient pas* leaves the embarrassing Question of *Property* unsettled.

After reading these different Definitions of One Offence, and *that* too the most common in all Nations, can we wonder at the Expressions of M. Rossi already quoted? And moreover, is it not idle to suppose that People, particularly the lower Orders, take their Notions as to the Criminality of wicked Actions from Books, or from Definitions of Crime? A Thief knows when he is thieving, without the Aid of a Digest, and will be as much restrained by an unwritten as by a written Law, so long as Punishment is speedy, certain, and sufficiently terrible.

Before this Part of the Subject is concluded, it must be observed that the Definition of Theft in the Code Napoleon has not produced the Effect which the Law Commissioners seem to have anticipated from Definitions, accompanied by suitable Illustrations; and that, notwithstanding the skilful Exercise of the Functions of the French Legislature, it has still been necessary to resort to the Interpretation or Construction of the Courts in France authorized to administer the Law.

The following Questions, among others, relating to the Construction of the Clause in the Code Napoleon defining Theft, have been referred to the Court of Cassation :

“1st. Whether a Debtor who steals Property of his own placed in Pawn, or Property of his own seized under legal Process by a Creditor, is guilty of Theft? 2d. Whether to constitute the Crime the Design to appropriate must be contemporaneous with the taking away (Enlèvement) which is necessary? 3d. Whether a Servant finding a Jewel in his Master's House is guilty of Theft by appropriating it? 4th. Whether the fraudulent Subtraction of prohibited Merchandise is Theft? 5th. Whether Pigeons can be Subjects of Theft? And this appears to depend upon a Complication of Circumstances.† 6th. If the Misappropriation of Property found be Theft; and under what Circumstances? 7th. Whether an Insolvent, deceitfully obtaining Possession of Property upon an Agreement to pay ready Money for it, is guilty of Theft, or *Escroquerie*, or neither? 8th. Whether a Creditor who, under certain Circumstances, and by the Threat of a Criminal Prosecution, procures from his Debtor an Obligation for a Sum exceeding the Debt, is guilty of Theft? Whether a Debtor who procures the Surrender of several obligatory Documents in exchange for one not signed is guilty of Theft. If a Creditor who openly, and in spite of his Debtor's Opposition, takes possession of the Debtor's Property, is guilty of Theft.‡

This List, which it is said might be greatly enlarged, will show that the modern and written Law of France § has given rise to the same Description of Doubt as has arisen on the ancient and unwritten Law of England, and this may well excite an Apprehension

* Would it not have been more simple to have declared that whoever moves the Thing *commits* Theft, not is *said* to commit Theft.

† The Law applicable to Pigeons appears to have been much considered by the Law Commissioners. See Note N., page 73.

‡ In Page 75 of the Note respecting fraudulent Offences against Property, after noticing the almost invisible Line of Demarcation between the criminal Misappropriation of Property not in possession and Breach of Trust, the Law Commissioners justly say, that the Offences *fade imperceptibly* into each other; and add, “this Indistinctness may be greatly increased by unskilful Legislation. But it has its *Origin in the Nature of Things, and in the Imperfection of Language, and must still remain, in spite of all that Legislation can effect.*” This Admission of the Law Commissioners should be borne in mind when the foregoing Observations and the Definitions of Theft are considered.

§ The Law Commissioners acknowledge that they have derived much valuable Assistance from the French Code, and from the Decisions of the French Courts of Justice, on Questions touching the Construction of that Code.

that the Code proposed by the Law Commissioners for India will not prevent the written Law from being overlaid by an immense Weight of Comments and Decisions, whatever may be the future Form of judicial Organization.

Any Comparison between the Definition of Theft framed by the Law Commissioners and the other Definitions quoted has been purposely avoided. The Observations have aimed to show the different Views that have been taken by different Legislators of this particular Subject, and to exhibit the many Difficulties which the greatest Lawgivers have experienced.

The Labours of the Law Commissioners have been arduous, and their Claim to every liberal Consideration of their important Services is undeniable, and no Remark that has been made should be interpreted into "malignant Criticism," for all that has been written has arisen from a Persuasion that the Task which they undertook was that which all Experience has proved to be impracticable. It may be added, that if they had even produced a Series of Definitions *apparently* faultless they yet would have failed to execute the important Design which is considered to have been desiderated by the British Parliament; and in support of this Observation the Opinions of that great Man, Sir Mathew Hale, on the Subject of Legislation shall be quoted, Opinions which will deserve to be well considered by the Legislative Council, whatever Measures they may adopt.

"It is certain that Time and long Experience is much more ingenious, subtle, and judicious than all the wisest and acutest Wits in the World co-existing can be. It discovers such Varieties of Emergencies and Cases that no Man would ever otherwise have imagined. It discovers such Inconveniences in Things that no Man would otherwise have imagined. And on the other Side, in everything that is new, or at least in most Things, *especially relating to Laws*, there are Thousands of new Occurrences and Entanglements and Coincidences and Complications that would not possibly be at first foreseen. And the Reason is apparent, because Laws concern such Multitudes, and those of various Dispositions, Passions, Wits, Interests, Concerns, that it is not possible for any Human Foresight to discover at once or to provide Expedients against in the First Constitution of a Law.

"Now a Law that hath abidden the Test of Time hath met with most of these Varieties and Complications, and Experience hath in all that Process of Time discovered these Complications and Emergencies, and so has applied suitable Remedies and Cures for these various Emergencies; so that in Truth ancient Laws, especially that have common Concern, are not the Issues of the Prudence of this or that Council or Senate, but they are the Production of the various Experiences and Applications of the wisest Thing in the inferior World, to wit, Time, which, as it discovers Day after Day new Inconveniences, so it doth successively apply new Remedies, and indeed it is a Kind of Aggregation of the Discoveries, Results, and Applications of Ages and Events, so that *it is a great Adventure to go about to alter it, without very great Necessity, and under the greatest Demonstration of Safety and Convenience imaginable.*"

If, however, it has been determined that the proposed Code shall become the Law of such Portions of the Indian Empire as are not subject to the Jurisdiction of Her Majesty's Courts, and if it shall not be deemed proper to introduce the English Criminal Law, with suitable Modifications, into the Provinces which are under the British Rule, it is hoped that it may be well considered whether the Population living within the Jurisdiction of the Courts at the Presidencies may not be suffered to remain subject to the Law which has been administered to them during nearly a Century. For that Period it has afforded Protection and general Satisfaction to the different Classes who have been subject to it; and however it may be considered "an artificial and complicated System," and whatever Degree of Reform or of Modification it may require, it is considered by many to be better calculated than any other System yet known to promote at the Presidencies the essential Objects of penal Legislation.

When the Law Commissioners observed that the Penal Law which now is administered at the Presidencies "has been framed without the smallest Reference to India," they must have overlooked the different Statutes that have been passed since the 13th of George 3d, and especially the 9th of George the 4th, c. 74, which was enacted, as its Title declares, "for improving the Administration of Criminal Justice in the East Indies," and for the express Purpose of extending to India the Benefit of the Changes in the Criminal Law which had been then recently effected in England by Sir Robert Peel and Lord Lansdowne; and if some of the Amendments that have been subsequently made by the Parent Legislature in the Criminal Law of England should be extended to India, and if such other Alteration as local Circumstances may require in respect of Crime and Punishment should be sanctioned, the Population within the Jurisdiction of the Supreme Courts will have abundant Reason to be satisfied.

It is remarkable, that, notwithstanding the Law Commissioners have been by Parliament expressly directed to inquire into the Powers and Rules of the Police Establishments in British India, and that, notwithstanding they have framed the Penal Code, which must be intended to *prevent* the Commission of Crimes, they do not seem to have otherwise recommended any System of a preventive Nature.

The Prevention of Crime is the primary Object of all Punishment, and there are Two Ways of preventing Crime; the one, by making it impossible to commit the Offence,

by anticipating and frustrating the Intentions of the Malefactor; the other, by threatening him with the Infliction of Pain if detected and convicted.

In France the preventive System provides considerable Protection to Life and Property, although, for obvious Reasons, the like Method has scarcely been employed in England. In many Countries where Crimes are punished less severely than in England, Measures of an arbitrary Character and of universal Application are employed to prevent the Commission of Offences. The System of Passports alone, now general on the Continent of Europe, affords considerable Facilities, not only for the Apprehension and Detention of Criminals, but also for the watching of Persons likely to commit Crimes; and although sufficient Information to justify Legislation on this Subject may not have been obtained, Persons who have been long resident in India entertain an Opinion that some preventive Measures which in England might not be considered constitutional or suitable may here be beneficially adopted.

Until the Diffusion of Knowledge by means of Education through the great Mass of the People of India shall have improved their Condition, and have corrected their Morals, it is apprehended that Punishment alone will not be sufficient to check the Progress of Crime, especially as the principal Incentive to Theft, Robbery, and Dacoity is Poverty; but if an efficient preventive Police can be organized, whereby the idle and disorderly may be strictly watched, and if those who travel over the Country for honest Purposes only shall be furnished with Passports, much may be done to check and prevent Crime and to diminish Punishment.

From the Calcutta Newspapers it appears that some Inquiry has there been recently made from Europeans and Natives touching the present State of the Police in Bengal, and the Changes that may be advisable, and it may be that similar Inquiry is intended to be made in other Parts of India; but until the most complete Information shall be obtained on this Subject, or before Police Establishments shall be organized in all the Provinces subject to the different Presidencies, with Regulations adapted to the Condition of the Inhabitants, and modified as local Circumstances may require, it should seem that the Penal Code ought not to take effect. Indeed it appears almost indispensably necessary, if Penal Legislation is to be general, that Procedure and Regulations for Police Establishments should be adopted simultaneously.

Such are the Observations on the proposed Code that have occurred to One who has resided many Years in India and who has had considerable Experience in respect of Police Establishments and Criminal Law at the Three Presidencies, but, from a recent Declaration of the President of the India Board in the House of Commons, as reported in the Newspapers, "that the Criminal Code was *pushed*" it may be apprehended that it will become the Law of British India without any Consideration by the Authorities in England either of its Merits or of its Defect.

Should the proposed Code be made a Law, which Millions in this Country must obey, and that without the Inquiries, Researches or Reports that were directed by Parliament, it cannot be too often repeated that the Public will inquire why the Work was not performed in England, and why the Expense that has attended the Law Commission has not been spared?

In conclusion, it is to be observed that although there are many respectable and intelligent Natives at the Presidencies and in different Parts of India, it does not appear that any of them have been consulted on the Subject of the momentous Change proposed to be made in Penal Jurisprudence, and that notwithstanding they have hitherto lived happily and contentedly under the Laws which have been administered, they are likely to be suddenly, and without any previous Communication, subjected to a new and to a complicated System, which many will find it very difficult to comprehend, however conversant they may be with the English Language.

If it were intended that this all-comprehensive Code should produce "the greatest Happiness to the greatest Number," surely some Communication ought to have taken place on the Subject of its Provisions between the Law Commissioners and well-informed Natives of all Classes, especially as they have not any Representative in the Legislative Council to watch over their Interests.

It perhaps may be said that Petitions may yet be presented to Parliament before the Code shall be adopted; but Experience has proved that Subjects connected with the Condition of the Natives of India are very little understood in England, and it has been stated, that to consider Matters on which may depend the Happiness of Millions in this Country it is difficult to keep together a Number of Members sufficient to form a House of Commons. If this Statement be well founded, the future Security and Happiness of every one born or destined to remain within the Territories of our vast Empire must wholly depend on the Deliberation and Decision which this most momentous Subject may receive from the Legislative Council of India.

It appears plainly from some of the Notes appended to the Code, that the Law Commissioners in several Instances were pressed and opposed by Difficulties which they were unable to overcome. In their Observations on Clauses 73 and 84 (Notes, Pages 18 and 19,) they have laboured to explain their Embarrassment, and while adhering to their Definitions, they admit that many Acts which fall within the *Letter* of the Penal Law ought not to be treated as Crimes, and therefore they are expressly excepted, rather

rather than leave it to the Judges to except them, in Practice. After many Observations in the Clauses mentioned, the Law Commissioners add, "We think it right, however, to say that there is no Part of the Code with which we feel less satisfied than this. We cannot accuse ourselves of any Want of Diligence or Care. No Portion of our Work has cost us more anxious Thought, or has been more frequently re-written; yet we are compelled to own that we leave it still in a very imperfect State," &c.

In the Note, Page 40, touching the Chapter of Contempts of the lawful Authority of Public Servants (a Chapter that seems to require the *greatest Consideration*), the Law Commissioners observe, "We see some Objections to the Way in which we have framed this Part of the Law, but we are unable to frame it better;" and it may be remarked that in the Passage which immediately precedes the Words last quoted a very large Discretion is allowed to Judges; a Discretion which may *unmake*, if not *make* the Law.

In the Note, Page 54, after assigning a Reason for differing in opinion from Mr. Livingstone the Law Commissioners say, "It is with great Deference that we bring forward our own Proposition. It is open to Objections. Cases may be put in which it will operate too severely, and Cases in which it will operate too leniently; but we are unable to devise it better."

In the Note, Page 59, notwithstanding the avowed Anxiety of the Law Commissioners to prevent Judges from exercising the Power of putting their own Sense on the Laws, they, after adverting to the Code of Louisiana on a Matter of Homicide, state as follows:—"The general Rule, therefore, which we propose, is, that the Question, whether the Person has by an Act or illegal Omission voluntarily caused Death, shall be left a Question of Evidence to be decided by Courts according to the Circumstances of every Case."

In Page 62 of the Notes, on the Subject of voluntary culpable Homicide in defence we read as follows:—"We have been forced to leave the Law on the Subject of private Defence in an unsatisfactory State; and though we hope and believe that it may be greatly improved, we fear it must always continue to be One of the least precise Parts of every System of Jurisprudence."

In Note, Page 73, the Law Commissioners say, "There is such a mutual Relation between the different Parts of the Law that those Parts must attain Perfection together. That Portion, be it what it may, which is selected to be first put into the Form of a Code, with whatever Clearness it may be expressed and arranged, must necessarily partake to a considerable Extent of the Uncertainty and Obscurity in which other Portions are still left;" and after other Observations, from which it may be inferred that the Commissioners considered that the Penal Code had been *prematurely* framed, they add, "It is impossible for us to be certain that we have made proper Penal Provisions for violating of Civil Rights till we have a complete Knowledge of Civil Rights, and this we cannot have while the Law respecting those Rights is either obscure or unsettled."

Again, in Pages 74 and 75, the Commissioners admit that it was impossible for them to determine in the Penal Code all the momentous Questions of Civil Right which in the unsettled State of Indian Jurisprudence will admit of Dispute; and that they had ventured to take for granted in their Illustrations many Things which properly belong to the Domain of the Civil Law, because without doing so it would be impossible for them to explain their Meaning. They observe, that in the Text of the Law they had, as closely as was possible, confined themselves to what was in Strictness the Duty of Persons engaged in framing a Penal Code, and add, "We have provided Punishments for the Infraction of Rights, without determining in whom those Rights vest, or to what those Rights extend." May it not be remarked, with all respect for the Law Commissioners, that they would have avoided this Difficulty by waiting until the Code of Civil Rights should have been framed?

No. 88.

The GOVERNMENT OF INDIA to the Honourable Sir HERBERT COMPTON.

(Legislative Department, No. 432.)

Honourable Sir,

Fort William, 2d July 1838.

We have the Honour to acknowledge the Receipt of your Letter dated the 9th ultimo, and of the Paper of Remarks upon the proposed Criminal Code to which it gave Cover and, in communicating our cordial Thanks for the Labour which you have bestowed upon an Examination of the Work of the Indian Law Commissioners to assure you that your Observations shall receive our most attentive Consideration.

2. We shall thankfully receive from you the valuable Body of Information respecting the Police of Bombay to which you allude as having collected, and partially arranged it, at a former Period, in the latter Part of your Letter under Acknowledgment.

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3. Permit us, before we conclude this Letter, to point out a ~~misapprehension~~ which runs through a considerable Part of your Observations upon the Code; viz., that the English Criminal Law Commissioners have recommended a particular Digest of the Law of Theft. This, however, we are informed is a Mistake. The English Commissioners did indeed prepare a Digest of the Common Law of Theft, which has received the Sanction of the Bench and of the Profession as an accurate Summary of the Rules of the Common Law upon the Subject; but this Digest was put forth by the Commissioners for the sole Purpose of showing that nothing more than a simple Statement of the existing Common Law Rules was necessary to demonstrate that they ought to be materially changed, and not merely consolidated. The Notes attached to the Digest, and the Language of the Report itself, are stated to make this sufficiently plain, and the Intention of the Commissioners in making the Digest is repeated in subsequent Reports; but, in consequence of the First Report referred to by you, the Commissioners received Instructions from Government that they were not merely to consolidate but to alter Principles, and it is believed that in pursuance of those Orders the Commissioners have already prepared a Law of Theft very different from the Digest.

We have, &c.

(Signed) A. ROSS.
W. W. BIRD.
A. AMOS.
W. MORISON.

No. 89.

Sir JOHN AWDRY to the PRESIDENT IN COUNCIL.

Honourable Sirs,

Bombay, 2d June 1838.

I REGRET that when you did me the Honour of asking my Opinion on the proposed Penal Code I did not immediately acknowledge your Communication; but I was at the Time much occupied with the Business of the Court, and expected that the Observations I should have Occasion to submit to you would be much more concise and finished in much less Time than now appears probable. I therefore solicit Indulgence for the Time which has elapsed, and at present forward what strikes me as to the general Character of the Work, reserving for a Second Letter my Comments on the Details.

2. I conceive that I am in no measure consulted on the Expediency or Practicability of Codification in general, or as regards the Penal Law of India in particular, but assuming the Necessity of framing a Penal Code as the only Means of providing for the Wants of a Population which has no One System of Jurisprudence applicable to all, that I am merely consulted as to the Execution. I shall not therefore offer any Reasoning in support of my Views on this Head; but I must shortly advert to those Views, for if the Task be One the satisfactory Execution of which I consider impossible, that may be very high Praise which if the Task were easy would be severe Dispraise.

3. And such I consider to be the State of the Question. 1. That any Code of mere Enactment can be made an adequate Substitute for a Jurisprudence of Principles developed in the long Practice of a highly civilized Nation seems to me impossible; for, however just the Legislator's Apprehension of a Principle may be, the Construction must depend, not on the Principle, but on the rigid and arbitrary Terms of the Rule. It is indeed in most Cases found utterly impossible to avoid the Necessity of construing Enactments (in the Language of the old Law) in order "to prevent the Mischief and advance the Remedy," for Language is not so precise, nor the Wit of Man so perfect, in anticipating all possible Combinations of Circumstances which may fall under One general Predicament, that the Judge can be guided solely by the Words of the Rule, irrespectively of the Purpose for which the Rule was introduced; yet, to whatever Extent he allows the Words of the Rule to be qualified by its Purpose, he legislates. He is not trusted to judge of an *Analogy of Principle*, but merely to test a complete *Conformity with the Rule* laid down*; yet there

* See Livingstone, Book 1. Ch. 1. Articles 4, 9, the former of which professes to abolish the Practice which the latter in a particular Case requires to be followed.

never has been a Code in which this has been avoidable. Principles are plastic and bend to the Reason of the Thing; verbal Rules are not, and do not; and all, the Light derivable from the grammatical Sense of the Words, and the Modifications derived from a Consideration of the general Purpose, on the Construction, whether of Statutes or of private Documents, is by far the most difficult and most unsatisfactory Branch of Law. It is notoriously that on which it is least probable that the Decision of several equally sound and cautious Lawyers will coincide; so much greater is the Precision of Thought whereby Men of similar intellectual Cultivation apprehend a Principle than the Precision of Language wherein it has been found practicable to enunciate a Rule.

4. Where, however, very inferior Instruments are to be used, some Approach may be made to the Application of a Rule, but none to that of a Principle, by those who are quite ignorant of its Ends. The Decisions upon it will be vague and various, but, except in Cases of gross Oversight, will range somewhere within the possible grammatical Sense of its Terms. To require a common Hindoo Manilutdar to apply Principles either from Lord Coke or even from the Hedaya would be as fruitless as to tell a common Arab Navigator to find his Position by Lunar Observations; for either Purpose it is necessary to have an Understanding of the Thing signified; while the empirical Application of the Arab's rude Instruments or of a written Rule will give, the Operator knows not why, a Result which, though it never can be accurate, falls within some limited Circle of probable Error. 2. Even in the inconceivable Case of the Legislator having made his Enactment sufficiently comprehensive by anticipating in his own Mind every possible Case before he framed it, and having expressed it with a Precision to which, however, Speech has hitherto been found inadequate, the Enactment can never be the whole Law. The Spirit in which it is administered is a Part of the Law. Every Enactment floats, as it were, in a Medium of unwritten Equity, varying according to the varying Characters of Nations, which modifies its practical Operation. This cannot be fixed by Enactment; but it can be and is, to a great Extent, in an indigenous System of Jurisprudence, instilled by Usage, and its Illustrations even recorded in Precedents, and therefore as it goes to constitute the Rule of Action I call it a Part of the Law.

5. These Observations,—too long, I fear, for the Place in which they are, yet far from adequate to express my Meaning,—are required in Justice to the Commissioners, who seem to me to have done far more than I thought practicable in encountering the Difficulties of their Task. The Mass of my Remarks will, almost necessarily, consist in pointing out Defects, because the Difficulty of Enactment generally is, to be sufficiently comprehensive, and that will occur to One Man which has not occurred to another; but, moreover, I may have many Objections to make, not of Detail but of Principle; and if I only pointed out what I thought wrong, contenting myself with silent Acquiescence (as must generally be the Case, unless I follow them through every Clause,) in what I think right, I might be supposed, instead of merely marking my Sense of their Distance from an unattainable Perfection, to be joining in the vulgar Obloquy to which I have seen them exposed.

6. The First Impression which was made upon me when I saw an early Draft of the Code, without the Preface or Notes, was, how simple and practical, the whole Scheme seemed to be, how little (with certain grave Exceptions) departing from the substantial Principles of the Law of England; and particularly, looking on it from the Point of View in which my habitual Occupations have placed me, how easily I could leave to a Jury almost any Charge it contained. This Impression has continued and been confirmed by the Perusal of the complete Work; and to it has been added a Sense of the general Comprehensiveness of its Plan (I say general, for doubtless there are innumerable Omissions of Detail, though I have detected much fewer than I should expect), and of the sound Reason of large Classes of its Provisions. I must not be understood to recommend its immediate experimental Introduction at any of the Presidencies; for the Evil of experimental Changes is greater where the Law is more certain, and is more felt where the People are already better informed what it is. But if it should be considered that the more powerful Machinery and the greater Publicity of the Supreme Courts would render the Experiment there more satisfactory than in the Mofussil, as suggested by the Commissioners,

I see no insuperable Difficulty in its immediate Application. In a very few Instances (as when there is express Reference to the unpublished Code of Procedure) there might be Obstacles requiring a legislative Provision. But the Procedure of the English Law seems fully adequate to its general working, and the Enactments are generally so conformable to the sound and universal Principles of this Branch of Law, which is or ought to be much less artificial than the civil, that I should see no great Inconvenience and no Injustice in its Introduction.

7. The above contains almost the greatest Praise of which I conceive the Draft of such a Work capable, as long as it is not matured by those Amendments and Interpretations which in the Course of Time will supply its Defects, correct its Errors, and authenticate the Sense of every Line. The present involves a bold and to a certain Extent a successful Attempt to mitigate the unavoidable Evils of the sudden Introduction of a Mass of enacted Law.

8. My Apprehension of their Nature will be illustrated by enumerating the only Four Modes in which I conceive that a Mass of Law can at once receive legislative Authority:—

1. That of the Codes of the ancient Barbarians, which never can have received any accurate Interpretation, but the Enactments of which served as Landmarks to guide in some degree the Discretion of their rude Tribunals. Something similar to this must be the immediate Effect of the Code in the minor Indian Judicatures. Ultimately it may be hoped that a Measure of the Certainty which will be gradually elaborated in the higher Tribunals will extend to the lower.
2. That of our Civil Legislation about the Period when our Tribunals and general System of Government assumed something of their present Form. Then a rude Legislature dictated to a Judicature trained to great logical Subtlety, and acting on accurately recorded Precedents, a Principle on the Observance of which they insisted, leaving the Tribunals to interweave it as they best could with the existing Institutions. The Origin of the complex Law of Entails under the short Act called "De Donis" is a noted Instance of this. But this avowed judicial Legislation would be the last Consequence which could be intended in this Instance.

The 3d Mode is that adopted by Justinian, which seems to be the only Mode by which the Legislator can give to the general Mass of the Jurisprudence of a civilized People a more definite Character than "written Reason" sanctioned by approved Usage.

The 4th is that which has been adopted; and viewing it only as a more extensive Statute than any other, I have spoken of it with high Praise, as an Essay making a wonderful Approach to Success where I conceive Success itself to be unattainable. But I conceive it to be but the smallest Part of the Law. That the whole unwritten Law of England, except where distinctly repealed by inconsistent Provisions, is imported into it, and necessary to its intelligent Construction. It was said some few Years since that on the Promulgation of the Code Napoleon the Price of old French Law Books fell to nothing, but that from that Time it had been continually rising. Such a Result I believe to be inevitable, except where all Certainty is disregarded, as in the Barbarian, or where, instead of an Enactment, there is a Digest of Authority, as in the Roman Mode.

9. Viewing then this Work as an admirable Attempt to comprise in a single Statute the Definitions of Crimes and their Punishments, but no more,—and considering that those who, because they can point out numerous and important Defects in it, think they show that it is not entitled to that Praise, only betray their own Ignorance of the extreme Difficulty of sound Legislation,—I now come to the Statements of the Commissioners in their Preface. Sincere as I have no doubt their opening Claim to Originality is, I apprehend it much more arises from their Sense of the little Assistance which existing Systems have afforded in point of Form than from the great Amount of really new Matter. Some beneficial Principles are, as far as I am aware, newly developed, and there are some very questionable ones; but I think them entitled on the whole to the much greater Praise of having seldom much disregarded the Experience and recorded moral Sense of the World.

10. I wish I could say that the Fairness with which they mention other Codes was such as to entitle them to deprecate "malignant Criticism" on their own. I will give but a single Instance. Their Attack on the Bombay Code, for bringing under One Definition trivial and most important Crimes of precisely the same Character, leaving it to the Discretion of the Judge to impose a light Punishment in light Cases, comes with an ill Grace from those who, when they have brought together Crimes of very different Degree, have withheld any such Discretion; so that a Man who puts on a different Hat, or changes the Direction of his Walk, that he may not be recognized and made civilly responsible for a petty Trespass, is exposed to the same Punishment as one guilty of wilful and corrupt Perjury, which must not be less than a Year's Imprisonment. To have overlooked the Distinction, that while *giving* false Evidence is always committed in defiance of solemn Warning, and in breach of an express Undertaking to communicate the Truth, and that therefore a Minimum of Punishment may in this Case reasonably be fixed, the fabricating false Evidence admits of all Degrees, from the most atrocious Cases to the very slightest Acts of Disguise or Concealment, is venial, for innumerable Oversights are unavoidable; but those who have fallen into it are little entitled to stigmatize the Cruelty of a Code which gives the Power of reducing Punishment in due Proportion to the Reduction of Guilt, which Power they in a more than analogous Case have withheld.

Clause 190.

11. Their Method of Illustrations by Examples is excellent. It is the Practice in other Sciences, and the Want of it has been felt in Law. Mr. Livingston occasionally uses it, but in a Manner confused between Illustration and Enactment. Here it occupies its proper Place, distinct from the Enactment. They truly say that Precision could not always be made consistent with Neatness and Perspicuity. They have preferred, and rightly, Precision. Their Sentences are hardly more harsh and are far less prolix and involved than those of Legislation in general; but still they often *are and must be* harsh; and at any rate the synthetical Apprehension of them is difficult to Minds not accustomed to accurate thinking; but an Instance of the Rule in action will lead the Mind analytically to it. The Examples ought, however, in my Opinion, only to be looked at like those in Grammar,—simply to lead the Mind to apprehend the Rule,—not to define its Limits in doubtful Cases, or the Example becomes Part of the Rule, and their Statement that "the Definitions and enacting Clauses contain the whole Law" will be falsified. A fictitious Example should only illustrate real Examples, which, like real History, may instruct.

As in the Section on False Pretence.

12. But there is another Objection to treating them as limiting the Rule, that it would be an Assumption of the totally distinct Office of Interpretation; that they proceed to assume as essentially belonging to the Legislature, and call in aid the Authority of the Roman Jurists, pp. 7, 8. The *Terms* indeed of their Quotation are, as they appear conscious, more expressive of Insolence than of Dignity; and the *Fact* they will hardly doubt, that the noble Jurisprudence of Rome must owe more to the Wisdom of its Ulpian and its Papinian than to the Rescripts of its Imperial Masters. However frequently the Legislator and Interpreter may have usurped each other's Functions, those Functions are not only radically distinct, but destitute of all Analogy. The Passage cited is no less inconsequent than arrogant. *Legum ænigmata solvere* is an Act of Reason, and must submit itself to the Test of Reason; Inquiry into its Soundness, *Leges in præsentem condere*, of Power, and belongs absolutely to him, *in concessum est*. The Meaning of the existing Law, as truly as the Motion of the Earth, is a pre-existing philosophical Fact, not subject to the infallible Decree of Pope or Emperor. Power cannot create an Œdipus. It can only dictate a new Law when it pretends to interpret the old.

13. The Doctrine is indeed well fitted to flatter a despotic Legislator; but, except under a Government which is lawless as well as absolute, I consider it thoroughly unsound. The Law is not the secret Will of the Legislator, but his expressed Directions for the Guidance of the People. That is its sound Construction which is the sound Conclusion as to its Meaning for those who are to obey it to draw. Now, because the Legislator must see it by a Light which they possess not, because instead of construing what he *has* said he can scarcely escape thinking over again what he *intended* or *ought to have said*, he

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will be a worse Interpreter than any other equally qualified Man, for he will almost inevitably amend where he should interpret.

14. But even the imaginary Advantage and real Disadvantage only exists in the Case of a single independent Legislator. He who penned the Enactment may best know what he himself meant. Whoever amended, whoever supported it, may best know what his own individual Views were in doing so; but it is utterly impossible to collect and embody all these several Views. That which they or the Majority of them have ultimately concurred in expressing (perhaps with very different Notions of its Effect) is the Law; but the legislative Understanding of an Enactment is not confined to those who take an active Part in its Discussion. It is far more to be found in the Sense attached to it by those who, reading it with no other Light than its Terms afford, either support it or abstain from opposing it. In this Condition, as regards Legislation for India, is to be found the British Parliament, from whose supreme Authority the local Legislature emanates, and to whose tacit Approbation all its Acts are submitted.

15. But let us test the Doctrine by its Application to other Instruments. Are the Framers of a Will or Deed to be examined as to its Effect, because they "must know more certainly than any Judge can know what" that "is" "which they mean to make?" The Absurdity is apparent. The Observation, *quod voluit non dixit*, is immediately applied; but it is no less applicable to the Legislator, unless those who are to be guided by the Law are to be subject to the Tyranny of him who should call on them first to discover the Dream, and then the Interpretation.

16. But, even admitting Interpretation to be but a Part of Legislation abstractedly considered, the Indian Legislature will hardly, if competent, be willing to repeal that Rule of the British Constitution which places the Two Parts in different Hands, by which it ordinarily belongs to the Judges (subject to Correction) *jus ducere*, to pronounce what the Law is to the Legislature, *jus dare*, to ordain what it shall be.

17. The Expediency of this Separation as a Civil Provision is manifest. A loosely worded Law is, as the Commissioners truly observe, no Law; yet what is so likely to tempt the Legislator to Indolence, or to deceive him into Unconsciousness of this radical Defect, as the Certainty that the Effect of his Provisions will be authoritatively scanned by no Criticism but his own? and if he falls into either of these Faults it is irremediable. The surest Safeguard is to follow up in Practice the avowed Principle, that his Enactments are put forth, not for his own, but for other Men's Comprehension; and the Remedy, whether the Judge find a real Defect, or introduces One by his own Misconstruction, is always in the Legislator's Hand,—a fresh Enactment.

18. I will not examine the Question whether the occasional Exception by Parliaments passing a declaratory Law is not, like an Act of Attainder, an Act rather of Supreme Power than of Legislature. The Distinction is well known in America, where, as here, the Legislature does not (like the Parliament) comprehend within itself all the Powers of the State; but I have not at present Access to sound American Authorities. The Effect of a declaratory Law has, indeed, often been produced here, by requiring all Courts, &c. to deem the Rights to be so and so; but such a Power, if it exist, is different from the ordinary Power of Interpretation.

19. That the Legislature, after passing such an Act as the present, should be employed for some Years in regularly introducing the requisite Amendments, must be necessary; that for that Purpose Doubts and Defects should be reported is proper; but Judicial Legislation will not thus be prevented; a Doubt is a Caution. Judicial Legislation chiefly arises where only One View of an ambiguous Clause occurs, and is therefore adopted without Hesitation, or where the gradual Deviation from the correct Sense of an Enactment is in each successive Step so minute as to be imperceptible, and it is only at last perceived in the aggregate.

20. As, however, the Commissioners do not intend that the Legislature should actually exercise the Right to reconsider decided Cases, but merely in the Enactment of a new Edition of the Code should add Illustration, including or excluding particular Cases, they do not assign to it *in fact*, though they claim in Principle, that Office of Interpretation the Claim to which I have argued

argued to be unphilosophical, inexpedient, and unconstitutional. The new Illustration will, when introduced with the same Authority as the rest of the Enactment, merely be an unusual Form of Enactment, limiting, extending, or otherwise qualifying the Provision. The Doctrine that the Provision itself contains the whole Law will certainly be falsified by giving (as they propose in p. 9.) to this Illustration Legislative Authority. It will *therefore* not strain the Law, where it is required to make Language which is "as precise as the Subject admits of" sufficiently intelligible, simply because it is a modifying Part of that Law. The Method is new. I do not know, when it is (contrary to the View of the Commissioners) an avowed Part of the Law, and not retrospective, that it is inexpedient; nor when these are no longer fictitious Cases (as to which I have before expressed an Opinion), but the Results of Experience, can I say that enacting that such Cases shall or shall not be deemed to be included may not be effectual; at the same Time that it is easier than amending the Body of the Clause, as well as more authoritative than the Judicial Decision that they are comprehended or not in its obscure Terms. •

21. They will not, however, supersede the Use of Judicial Precedents, explaining the Enactments on Grounds of Reason,—not on mere Authority. The Idea "that the Code will be at once a Statute Book and a Collection of "decided Cases," and that "these Cases will be of more Value than Reports, "because of legislative Authority, whereas the Reports would only give the "Opinions of Judges which other Judges might venture to set aside," arises in complete Misapprehension of the Nature of the Authority of such Reports, and of all other Expositions of Law, considered, not as a Collection of arbitrary Edicts, but a high moral Science. Their Weight depends on their Liability to be overruled unless they are warranted by Reason; and it is therefore that Lord Stowell's Judgments, being approved by the Reason of the civilized World, are conclusive, where the Acts of the British Parliament, having only the Power of our Empire to support them, are disregarded.

22. The Evil that there exist so many independent Judicatures without an Appeal short of the Queen in Council is undoubtedly a great one, but it may be greatly mitigated by other Means than that of virtually transferring the Appeal from the Queen in Council to the Legislative Council. The ultimate Principles of Interpretation *must* be those of the English Law. No others would be available, even if there existed a great School of Native Jurisprudence; for the Native Laws, not proceeding on the Authority of any Human Legislator, must be wanting in this Branch of Law. But in fact no others would be practicable by a Court sitting in England, or compatible with the Supremacy of the Crown and Parliament.

23. I conceive, however, that all Courts might be authorized to give their Judgments, subject to a Case stated in the same Manner in which Courts of Quarter Sessions state Cases for the Opinion of the King's Bench. I need say no more, as this very easy and simple Mode of raising the Question must be well understood by you.

24. I scarcely venture to suggest whether the Questions should be stated for the Opinion of the Supreme Court at Calcutta, or of a Judicial Body for which the Members of that Court, of the Courts of Sudder Adawlut, and the additional Member of the Legislative Council, might furnish Materials.

25. Whilst I am on this Point I hope I may be forgiven the Digression (if it be One) of soliciting your very particular Attention to the Question whether all Courts, from which the Appeal lies direct to the Queen in Council, might not be allowed to give their Judgments in this Manner, subject to the Opinion of the Court of Appeal. It would allow a really doubtful Question of Law to be raised before the Supreme Tribunal, without all the Prolixity and consequent Expense and Delay of an ordinary Appeal. The Advantage, besides that of Expense, to an honest Respondent, would be great, because, instead of having to sustain his Judgment in all Points, he would only have to support it on the Point reserved; yet would an honest Appellant have an Advantage which he does not now possess, for where, as is frequent, there is a Jumble of Law and Fact, and of Evidence doubtful and contradictory, and scarcely intelligible, except on the Spot, a vicious Judgment must often be sustained, because the Court of Appeal cannot see on what Grounds it rests, nor, consequently, that it rests on untenable Grounds.

26. It may seem paradoxical to say that any Course can be advantageous to both Litigants, except as regards Prolixity and Expense. The Advantage, if confined to them, would be great; but it may have a further Advantage, not to both indeed, but to whichever of them has the Merits on his Side, by obviating much of the Confusion and Chicane which tend to obscure those Merits. That is the Benefit above suggested.

27. It is essential that the Court should have absolute Discretion to refuse such a Case; for if it be in any Case claimable of Right the Parties must have an equal Right to claim the Insertion of all that is material, instead of merely those Parts on which the Court thinks its Decision may require Review. It would therefore be a mere Appeal under a new Name. Nor is this hard on the Appellant. His old Right of Appeal is untouched, and the added Opportunity of raising the Point of Law in a simple Form is an unmixed Boon to him.

28. As it is never compulsory, it seems to me that the Courts ought to be empowered to state a Case in any Proceeding whatever, whether appealable or not. In some Cases not appealable it would be very desirable that a substantial Question should be simply raised. An Action for a very small Sum is often brought for the real Decision of Rights of the greatest Value. And the Courts may be trusted not to allow it where it would be frivolous or unjustly vexatious.

29. It seems clear that subsequent Penal Legislation should adopt the Nomenclature and be made a Part of the Code.

30. If the Commissioners think it practicable, it is plainly right that none should be exempted from the Law. As regards Procedure, it may perhaps be necessary in the Mofussil, and with the Nabob's Family at Madras, that peculiar Privileges should be allowed in respect of Examination. But they are an enormous Evil if not confined to mere Forms of Respect while under Examination. If the Examination of a Witness have not the Check of Publicity and of Continuity with the rest of the Cause, so that the same Audience take it in connectedly with the rest,—if he be not allowed to be pressed in Cross-examination, so that Inconsistencies may be exposed, instead of his having Time to colour them over,—Tests of Truth nowhere more necessary than in this Country will be wanting. Nor is the Effect only that Falsehood will escape Exposure. That would be Evil enough; but Truth, not being exposed to the Test, will not have its Weight. In Bombay, where we have a highly respectable Native Commercial Aristocracy, and no other,—where none but diplomatic Persons (except occasionally Persons under some Compulsion) can have Occasion to be, except on the Terms of submitting themselves to the Law,—I am clear that no other Male Person ought to be privileged.

31. As to Females the Difficulty is greater. I have seen so little practical Evil (from the Rarity of Cases in which Women of the higher Classes are necessary Witnesses) in administering Law under a System which professes no such Distinctions, that I should be reluctant to see any Enactment conferring a Privilege, which will be clung to as an honorary Distinction, and would therefore tend greatly to check the Advance of Civilization. Yet if it were necessary to legislate specifically on the Subject, I am not prepared to say that an Enactment that all must indiscriminately submit to Examination in open Court would be safe. Even the Parsees, in all Things the most liberal, and particularly as regards their Women, are not ripe for this.

32. Whilst on the Subject of Examination it may be right to advert to a Point of such general Application that it may properly be included in the general Review, though not mentioned in the Preface to the Code, and not distinctly elsewhere. I mean the Case of Oaths. The Offence of giving false Evidence is unconnected with the Idea of Perjury. It would appear that a Relaxation of the Rules requiring Evidence on Oath is thought of. I am inclined to think something of this Kind might be done with Advantage. I am reluctant to dispense with the religious Sanction where it can be obtained. But it can be hardly supposed, though a Form of swearing is used, that it generally is obtained in this Country. Doubtless the Minds of all Classes here are accessible to Terrors connected with the Vengeance of unseen Powers. Challenges to some peculiar Mode of Abjuration are not uncommon among Litigants. But the Court cannot learn by what the Conscience of the

Witness is really bound. It has no Resource but to ask him, and in answer he will of course, if he mean to swear falsely, take care not to mention what he thinks really binding. Nor could Courts follow Witnesses to the Places on whose Sanctity many Oaths depend, nor (without agreeing with those who deny that a conscientious Man can impose an Oath except by what he himself venerates) could they with Propriety follow Superstition into all the strange Rites and Imprecations to which it may resort. I therefore think that the Idea of dissociating the Crime of false Testimony from the Profanation of an Oath is, when there is so little Approach to Community of religious Belief, right; and that it may be right to substitute in many Cases a civil Sanction equivalent to an Oath.

33. I have said that without recommending experimental Change at the Presidencies I do not consider the Code as it exists much less capable of being introduced there than the Commissioners appear to consider it in the Mofussil. Without the Code of Procedure it is hazardous to speak; but I doubt whether some broad Line of Distinction, analogous, not to the etymological Meaning, but to the practical Difference of Felonies and Misdemeanors at the present Day, i.e., into the heavier and lighter Crimes (as retained by Mr. Livingstone), may not be found expedient generally. Police Powers which are adequately stringent for the greater Crimes will be oppressive in minor Cases; and Police Authorities cannot be expected to apply on the Instant a Number of Rules. In rare Cases the Distinction between Felony and Misdemeanor may run into Refinement; but it is surprising (though the Police Powers in the Two Cases are so very different) how little is the practical Difficulty even with Native Policemen. Every Crime involving Theft, and a few others whose Atrocity no Man doubts, is a Felony.

34. In general the Classification seems to be simple and good. It has indeed the Inconvenience from its Novelty that many Things which we are used to seek together are separated. In the Instance of Libel I should say too much separated. It is to be sought at least under Abetment, Offences against the State, Defamation, and Insult. I wish that Offences relating to Religion and Caste, instead of having been thrown together, had been similarly distributed. It is fit that they should be punished; but almost all were capable of being included clearly, but in general tacitly, under some other Head, so that where a Wrong had really been committed the Magistrate would be at no Loss to visit it, without their being thrown together into a Manual of Sectarian Animosity. The Kind of Crime is One which it is peculiarly dangerous to pass over as frivolous under 73; yet the Charge is peculiarly likely to be so in reality where the Form of the Law expressly calls Attention to this Mode of annoying an adverse Sect.

35. The general Purpose of avoiding Fiction and adhering to strict Truth is excellent. For this Reason I think the Commissioners have done well in subjoining to "intending" the Phrase "or knowing he was likely" to produce such an Effect, instead of leaving it to the legal Presumption that a Man must be taken to intend the obvious Consequences of his wilful Acts; but I think they carry this too far, and are apt to take a narrow View of Intention. Intention embraces not merely that Result which an Agent wishes but all those which he knowingly hazards. A Slave who ships Negroes with the Knowledge that from the State of his Ship Half of them will probably die on the Passage may strictly be said to intend the Murder of those who die as well as the Captivity of those who survive. He considers the Mortality a necessary Evil instrumental to the other Object, like an Engineer who damages a Fortress he desires to take. His Intention in each Instance clearly embraces both, though he is anxious that the profitable Portion of the Harm he does should be as large and the purely mischievous as small as is consistent with the general Object. I shall probably have Occasion to say more of this when I come to Details; but having felt it due to the Code to express my Sense of the valuable and pervading Homage it pays to Truth, I could not avoid expressing it with the Qualification it seems to require.

36. The Chapter on Punishments is of so general a Nature that it seems more properly adverted to now than reserved.

37. In the Reasons for not punishing capitally a Number of Offences committed with that superior Force that Murder was probably in the Power of the Criminal I fully concur. I do not dispute the Right of Society to take away

Life for Crimes deeply affecting Society ; but in addition to the Arguments used, this certainly is a sound One, that the People can hardly have a high Sense of the Sanctity of Human Life where they are accustomed to see it frequently, and, as they may suppose, lightly taken away by public Authority.

38. The Observations on Transportation appear just as regards this Country ; but they have properly qualified their Application to Europeans. It is probably rather the political Danger of confining for long Terms in England great Numbers of Persons with whom many out of Prison have more Sympathy than with public Justice, than the Superiority of the Punishment to Imprisonment, that causes Transportation to be so much used in England. The Banishment from India of Foreign Criminals seems to me most properly made a Part of the Code. I do not now observe on its particular Allotment. The Power of the Executive to commute Transportation, as distinct from the general Prerogative of Mercy, is I think grounded on sufficient Reason ; and for the same Reason I think it would be desirable that the Place of Transportation should (as in England) be left to the Executive, instead of being (as in the Supreme Courts) a Part of the Sentence.

39. As regards Fine, I agree that the only just Rule is the indefinite One of the Bill of Rights. The Investigation of the Amount of a Man's Property is impossible. The fining to the whole Extent of Property acquired by Crime is not excessive.

40. The Commissioners probably think it hazardous to intrust Judges with the Power of changing simple into rigorous Imprisonment ; yet I think it would be a very desirable Mode of enforcing in many Instances the Payment of Fine, as practised in some of the Company's Courts, or, on Nonpayment, of preventing the very undesirable Protraction of Imprisonment. Some Men in Criminal Custody conceal their Property, in hopes that when the original Term is expired they will be released without Payment ; others really cannot pay. To an Insolvent's Creditors, not to himself, Fine is a Punishment. If already in Prison, he is invulnerable both to Fine and simple Imprisonment ; and I know some Instances of Insolvents who remain in Prison, from not having given a true Account of their Estates, who have sought their Liberation by all Manner of Calumnies and other systematic Annoyance of the Sheriff, Gaoler, Creditors, and all concerned in their Detention, stopping just short where there is another Punishment besides Fine and Imprisonment. I dwell, however, less on these occasional Cases than on the Importance of making him who pays in Person because he cannot pay in Purse work out his Liberation within the Term of his original Sentence ; and still more on the Effect of Certainty of Punishment, instead of enabling the Prisoner whose Property cannot be reached, except through his own Means, to feel or fancy that as long as the Sentence of Imprisonment lasts he can be no worse off, and therefore may safely take all the Chances. The Plan proposed of a limited additional Imprisonment, and a Right still to levy the Fine, is better than the indefinite Imprisonment of the English Law ; but I still prefer the Power of increasing the Rigour to extending the Term.

41. I am clear that the Commissioners are right both in holding that civil Satisfaction should not be lost because the Crime is a great one, and that the suffering inflicted by requiring that Satisfaction should go in part of the Punishment. I doubt, however, whether in great Crimes the Law of Forfeiture ought not to be partially retained. The Criminal would then be disabled in some degree from making away with his Property. The Executive would then make Satisfaction out of that Property more fairly and equitably than it could be extorted from the Offender ; and the injured Party would not have the Motive to prosecute civilly for his own Interest, and connive at Escape from the Criminal Charge. The Surplus of the Estate might be returned to the Criminal after a certain Time.

42. The Difficulty is to determine whether this Restitution should be precarious or of right. If precarious it is very difficult, almost impossible, to introduce such a Law by Enactment, though a similar Practice exists in England, where the Crown takes the Estates of those who die leaving no legal Representatives, but grants to Persons (as illegitimate Kindred) who make out a moral Claim. I am afraid, also, that when the Criminal could not call those who administered his Estate to a strict legal Account it would be very liable to Peculation. If, on the other hand, to obviate this, his Claim were to be of right,

right, he must have a Right to a strict Account of everything. No equitable Consideration could be allowed in settling the Claims of those whom he has wronged, and the entire cumbrous Machinery of Bankruptcy would be requisite.

43. The Practice of expressly providing for cumulative Punishment is very good, and seems in general (but this is not the present Question) well applied. Substantial Justice requires that a Man shall not be Twice punished for the same Offence. Yet it would be wrong that where the same Act was penal in various Ways Punishment for the slightest Crime involved in it should give Impunity for all the Rest. A petty Assault may be an overt Act of High Treason. The Doctrine of Misdemeanor merging in Felony prevented this Evil. The present Course prevents it in a Manner less simple, but better in a Country civilized enough to weigh out Justice with sufficient Minuteness.

44. I greatly doubt the Expediency of totally abolishing the Punishment of public Exposure. It should be very sparingly used, and should be confined to Crimes really scandalous, and to which we wish to teach the People that we attach a particular Opprobrium. The more atrocious Species of the *crimen falsi* have these Characters. They have, moreover, this Characteristic, that whilst Exposure is, as the Commissioners justly remark, the most unequal of all Punishments, the Severity varies, if restricted to this Class of Crimes, in a great measure with the Circumstances of Aggravation of individual Guilt and public Mischief. To a Merchant of Credit, a venerated Priest, a Man who had studiously maintained an unblemished Character, they are incomparably more severe than to an impudent Vagabond. But the Crimes of Forgery or Perjury, if committed by such Persons, are incomparably more atrocious in themselves than by the latter Character, and they obtain a Credit and inflict an Injury on Society at large, and on the Individual against whom they are directed in particular, which would not result from the Falsehoods of one who had nothing to enhance his Credit. If limited to such Cases, it would generally be to Hypocrisy, not to "the Remains of Honesty," that the increased Pain would be attributable.

45. The Principle of Punishment on Conviction in the Alternative is just. It does directly what the Law of England professes not to do, but in a great Number of Cases does indirectly, subject to Defeat by technical Accidents. As where the Crime is laid differently in different Courts, or where (for instance) a Man is accused of Burglary in breaking into a House with Intent to Steal, of stealing therein to the Amount of Fifty Sicca Rupees, and of breaking out, having stolen. Here are Three Capital Crimes, all of which may possibly have been committed, (which Consistency is what enables them to be framed into One Charge,) but the Proof of any One of which is sufficient.

46. The Head of General Exceptions I for the most part approve. A sound Line seems to be drawn as to trusting Individuals with their own Persons and Properties, and in certain Cases with those of others. I agree no less to the Exception grounded on the Sanctity of Human Life, and I wish that they had elsewhere followed up the Principle, instead of providing that Homicide by Consent should not be Murder. The Prerogative of Mercy would much better be allowed to apply when necessary to such Cases, than a Rule be laid down that a Man has to some Extent a Right to authorize its Destruction. This only applies to its wilful Destruction. It must sometimes be right to hazard it.

47. I agree with the Admission of the Commissioners, that the Line drawn as to the Right of private Defence is not satisfactory, as well as that it is probably the least satisfactory Part of most Codes. I cannot suggest a better Line. The Difficulty is inherent. A nicely graduated Scale of Urgency is impossible, because it depends on a Combination of so many Circumstances, wherein those which are higher in their Kind may exist in a lower Degree, and because the Rule is to be applied by unlearned Men, under Circumstances likely to deprive them of Self-possession. I do not see that the Commissioners have erred from the Line of moral Right and Wrong; and this the true Guide. Men cannot in general act in such Cases from the Knowledge of their Rights, but from the Impulse of the Moment, acting on Dispositions ready or not ready to place others Safety in fair Competition with their own. Upon this Footing, therefore, not on that of strict Knowledge of the Law, must their Responsibilities stand, though of course it is desirable to simplify the Law, so as to obtain the largest possible Amount of Knowledge.

48. One more Observation I will make on a Point which, though not very prominent in the Code, goes to the Root of the unsuspected Purity of our Administration of Justice and Government in general. It is proposed to put an end to the Prohibition of taking Presents; that Prohibition has been most beneficial, and I cannot see that the Reasons for it have ceased. The Difficulty of providing that it shall not operate harshly on Native Magistrates should be grappled with, instead of abolishing the whole Law. The Difficulty of drawing a satisfactory Line is no doubt considerable, but much may easily be done. To receive a Portion with an Asiatic Bride is no more illegal than to hire a House of an Asiatic; either may become so, if colourable; neither is so in itself. In all Cases of Kindred and Affinity Presents might be allowed. This would at once provide for the Majority of Cases in which they ought so to be, and would be attended with no Danger, because the Kindred or Affinity would be a Warning to the Public. The Situation of a disinterested Functionary who was at liberty to receive Presents would be very painful, knowing (as he must know) that their real Object would be inconsistent with his Integrity; yet that their Rejection would be an Insult. The Reasons assigned for not making Bribery in this Country punishable in the Giver of the Bribe are most satisfactory. They are in substance, that from the Habits and Circumstances of the Country he is the Victim of what has to him the Effect of Extortion; that Pressure must and will operate on his Mind as long as the Person whom he desires to propitiate is known to be ready to receive, and ready he usually must be, unless the Government by its Prohibition will relieve him from Discourtesy in refusing.

49. As regards a Judge's taking a Gift from one whom he knows to be a Plaintiff or Defendant in a Suit before him, this is still to be forbidden; but this (while it appears to me to concede the Principle) is totally inadequate. A Judge knows not One Tenth of the Causes which are on the Files of his Court, still less can he bear in mind who are all the Parties to each, still less who, without being nominal Parties, are interested; but all these Persons themselves, and all their Enemies, know, and important as the Matter is to them, they cannot conceive that it escapes the Notice of the Judge; his Character, therefore, suffers, and that of the Administration of Justice with it. But what is worse, this will most frequently happen to the most impartial Judge; he whose Attention habitually fixes itself on the Merits of the Cause, not on the Persons of the Litigants, except as prominent on the Evidence, will most frequently receive in Ignorance a Present which was intended for and will be understood as a Bribe.

50. Again, the Judges at the Presidencies, and to a less degree elsewhere, are a permanent exclusive Tribunal, having Jurisdiction over a concentrated Population, any One of the richer Members of which may any Day, and in the Majority of Cases often will, be interested in important commercial Questions which must come before those Judges. Valuable Presents then, even by those who have no pending Litigation, can in most Cases hardly be looked upon otherwise than as Retaining Fees for general Favour. Presents to a Judge on quitting Office would be almost the only ones not liable to Imputation.

51. Forgive me if I press upon your Honourable Board, as a Matter far more vital than even Uniformity of Criminal Law itself, the Importance of this Branch of our Policy, which exempts the upright from Suspicion, the wavering from Temptation, which guards the prominently favourable Characteristic of our Rule, the known Cleanness of its European Servants Hands.

52. I now conclude those more general Observations which respect the Character of the whole Work. I think very highly of its general Spirit and Execution, whilst I have felt bound to express strong Dissent from some Principles advanced. I have unavoidably been dealing with large Principles, on which it may be doubtful whether my Opinion will have any Weight. Hereafter I shall be concerned with practical Details, in which I shall have more Expectation of direct practical Usefulness. I am obliged, however, at present to discontinue my Remarks, as the approaching Term will preclude me from furnishing them for some Time, and

I have, &c.
(Signed) J. W. Awdry.

No. 90.

The GOVERNMENT OF INDIA to the Honourable Sir JOHN AWDRY.

(Legislative Department, No. 429.)

Honourable Sir,

Fort William, 2d July 1838.

WE have the Honour to acknowledge the Receipt of your Letter dated the 2d ultimo, and to return our cordial Thanks for the Labour which you have bestowed on an Examination of the proposed Criminal Code.

2. We await with Interest your promised further Communication upon the Subject.

We have, &c.

(Signed) A. ROSS.
W. W. BIRD.
A. ANOS.
W. MORISON.

No. 91.

J. P. WILLOUGHBY Esq. to the Officiating Secretary to the Government of BOMBAY, Legislative Department.

(Judicial Department, No. 1,567.)

Sir,

Bombay Castle, 10th June 1839.

WITH reference to the 2d Para. of my Letter, dated the 10th November last, No. 2,429, I am directed by the Honourable the Governor in Council to transmit to you, for the Purpose of being laid before the Honourable the President in Council, Copies of a Letter from the Register of the Sudder Foujdaree Adawlut, dated 9th ultimo, and of its Enclosure, being Minutes of the Judges of that Court, and Reports from the subordinate Authorities under this Presidency on the Subject of the new Penal Code.

2. I am at the same Time desired to intimate to you, that such of the Authorities to whom Copies of the Codes were sent, and whose Replies have not yet been received, have been directed to furnish without Delay the Information called for from them on this important Work, which will be forwarded to the Government of India as soon as they are received.

I have, &c.

(Signed) J. P. WILLOUGHBY,
Secretary to Government.

Enclosure in No. 91.

EXTRACT from the Proceedings of Government in the Judicial Department, from the Register of the Sudder Foujdaree.

Sir,

Bombay, Sudder Foujdaree Adawlut, 9th May 1839.

IN forwarding to you the accompanying Minutes of the Judges of the Sudder Foujdaree Adawlut on the new Penal Code, I am directed to observe that as the Subject required much more Attention than the Judges had Time to afford, whilst engaged in the current Business of the Court, and it being found impossible to discuss each Part in Consultation without giving the whole that undivided Attention in the Manner, in fact, in which it is believed it was composed by the Law Commission, and which would have put an entire Stop to the Business of the Court, it has been thought better to offer these Remarks separately, and to forward them as they were written during occasional Leisure.

The Acting Senior Puisne Judge would offer his very recent Appointment to the Court as an Excuse for his not having added to the Remarks made by him whilst Session Judge of Poona on the Subject.

The Opinions of the subordinate judicial Authorities that have been received by the Court are also herewith forwarded; but the Call made on others is yet unreplyed to, and most have found it impossible to give up sufficient Time to enable them to offer Opinions of Value.

I have, &c.

(Signed) P. W. LEGEY, Register.

MINUTES by Mr. GEORGE GIBERNE on the NEW PENAL CODE

Bombay, 19th March 1839.

I proceed to offer such Observations as occur to me on the Perusal and Study of the New Code.

Chapter II.

By Clause 57 an Offender is liable to a Fine imposed at any Time within Six Years after the Passing of the Sentence, although he may have suffered the Imprisonment in default of Payment in the first instance. I do not feel quite convinced of the Advisability of this Enactment, from the Arguments used in Note A. The Punishment, as it now stands, would be always much more likely to affect the poor Man than the rich; the one not having the Power at the Time of the Sentence to pay the Fine is imprisoned, and any little Property he may acquire afterwards,—for instance, his Wages of Labour, of Salary, of Service, within Six Years,—may be seized in Payment of the Fine; the rich Man would always pay and be free. The Punishment would, it appears to me, fall more equally on each Offender were the Imprisonment in default of the Payment of the Fines sufficiently proportioned; the rich Man would suffer in his Purse and the poor Man in his Person; and this Difference does not appear so objectionable as the providing a Punishment which will invariably inflict on the poor Man a double Ratio when the rich Man is always certain to be free at Half the Penalty. It is certainly an Advantage to levy a Fine from a Man who prefers Imprisonment to paying it, but if providing for this, I think, rare Instance, the Law is made to act unequally and injuriously in its Effects to by far the more numerous Class of Offenders, it should, if possible, be avoided. Were a discretionary Power permitted to the Judge in this respect, the Object would be gained. The Provisions of the Clause would seem to allow of this, but the Reasoning in the Note would seem to render the Measure imperative.

Chapter III.

The Abolition of Corporal Punishment may be hailed as an Event of great Benefit. Clauses 74 to 79.—The Right of private Defence extends to the inflicting of no more Harm than is necessary for the Purpose of Defence. This is a difficult Law to legislate upon, and as it now stands will, I think, occasion much Doubt and Difficulty; the Opinion of the Defender being acted upon at the Moment of Danger with all his Feelings enlisted in favour of extreme Measures, whereas those of the Judge, quietly contemplating in his Court the probable and distant Danger, will naturally hold a very different Opinion, and the Consequence will be that People will be discouraged from defending themselves and Property from Fear of the Consequences; this is to be regretted, for the Inhabitants of this Country require Encouragement, and not only that, but Spirit to defend themselves; and if we could instil this Spirit into them our Returns would show a very different Account to what they do at present. The Pusillanimity of the People is one of the chief Causes of the Number of Robberies. The Necessity of encouraging them to defend themselves is admitted in Note B, but the Law scarcely acts up to that Principle.

Chapter IV.

Clauses 88, 90, 91, 94, refer to the instigating of Persons to commit Offences which simply are not punishable. In Clause 88 the Offence must be committed to render the Instigation punishable, in Clause 90 the Instigation must be attended with the actual Delivery of a Bribe, in Clause 91 with the Threat of causing any Injury, in Clause 94 the Persons instigated must exceed in Number 10. Surely the Person who instigates another to commit an Offence under any and every Circumstance is deserving of Punishment; his Portion of the Offence is committed by his Endeavours to effect it, and the Execution of it may rest with others. The Principle adopted would hold good in reference to those who previously abet any Offence by engaging to commit that Offence, &c., according to Clauses 95, 96, and 97, for herein the Intention only is manifest, which may be considered in the same Light as a Man's Thoughts, and if a Punishment were assigned to them who could escape? The Instigator is an active Agent of Evil. The Designer may be considered quiescent until he either instigates or executes an Offence. The Principle is adopted in Chapter VI, Clauses 116, 118, 120, and 122.

By Clause 106 Concealment of Murder is punishable with only Two Years Imprisonment, which appears to me to be too lenient; and by Clause 382 any Person voluntarily causing Hurt in committing or attempting to commit Robbery, or in committing Dacoity, the Punishment shall be cumulative. By Clause 377 the Punishment for Robbery may be rigorous Imprisonment for Fourteen Years, and by Clause 321 any Person voluntarily causing Hurt for the Purpose of extorting Property, &c., &c., may be punished with rigorous Imprisonment for Fourteen Years; thus Twenty-eight Years Imprisonment is the Maximum therefore.

For Concealment or subsequently abetting Murder, by Clause 106, Two Years Imprisonment is the Maximum.

But for Concealment of or subsequently abetting Robbery, and voluntarily causing Hurt, the Punishment may be Two Years and Four Months; a greater Punishment for a less Crime.

Chapter VII.

The Provisions of Chapter VII, which relate to Offences against the public Tranquillity are a great Improvement upon the Law as it stands at present, and all necessary Enactments appear to have been made.

In Clauses 130 and 135 the Code of Procedure is absolutely required to establish the Offence.

Chapter VIII.

Chapter VIII. contains Enactments which occasion a sweeping Change of a System which has been in force for Years. First, in regard to the European Functionaries, is it advisable to alter a System in regard to their Conduct when such Conduct does not appear to require a Change, and when the System in Practice appears to act well? I should say certainly not. The Rule regarding the Receipt of Presents has hitherto never been found injurious, and I should very much doubt the Effects of the Law herein made; it allows the Receipt of Presents provided they are not "a Motive or as a Reward for doing," &c., &c. Here a most dangerous Field of Temptation is opened. Those who know the Natives of this Country must be aware of their Propensities to gain the Favour of their Superiors or of those in Power, although they may not have any immediate Object in view, and an European Functionary may be entirely free from the Motives rendered penal in accepting the Presents at the Time of their being made; but may they not have considerable Influence on remote Acts, and which may never be detected? I think this Law might possibly cause a radical Change in the Character and Conduct of the European Functionaries.

And with regard to the Native Servants, the Law as it now stands is most difficult to enforce, and the Crime is rarely proved though often suspected; that Difficulty will be increased by the new Law.

Chapter IX. provides for the Punishment of Contempt of the lawful Authority of Public Servants very effectually, and will be a great Improvement upon the Law as it stands at present, as many Cases are provided for which the Authorities cannot now punish, such as those in Clauses 152, 155, 157 to 163, and 170.

Chapter IX.

I think the Punishment provided in Clauses 173 and 175 excessively light; a Person rescuing a Murderer or Dacoit from Custody can only be imprisoned for Six Months and fined.

A Person apprehended for any serious Offence, whose Punishment might be Imprisonment for Fourteen or Ten Years, would always be ready to run the Hazard of so light an Addition to his Punishment as Three Months Imprisonment, as provided in Clause 175; this would never deter an Offender from attempting an Escape, and the Object of all Punishment is to prevent the Commission of Offences.

I think also the Punishment in Clauses 177 and 178 particularly light; the harbouring of Offenders in this Country is one of the strongest Features against the good and efficient Administration of the Police. We cannot get the People to assist us, but always find that they assist Offenders, in Food and Concealment, to a very great Extent. I think the Punishment should be very severe when the Offender in the foregoing Four Clauses is guilty of any atrocious Crime.

The Principle of punishing an Offence according to the Degree of Injury inflicted is admitted in the Notes to this Code, and one of the greatest Injuries to the Society at large is harbouring Gang Robbers, and yet the Man who harbours the Person guilty of a petty Theft, an atrocious Murder, or of Gang Robbery or Dacoity, is subjected to the same Punishment.

Chapter X. provides for Offences against public Justice, and the Classification and Divisions of the Crimes herein noticed and punished promise to be most efficacious. A Fabricator of false Evidence is not now punishable by our Law, and Clauses 193 and 194 embrace Offences which are very frequently committed in this Country and for which hitherto we have had no Punishment.

Chapter X.

The Principles and Reasoning shown in the Notes to this Chapter for making false Pleading penal are most excellent, and may such a Law be framed.

Chapter XI. The Offence of Smuggling is herein made penal, generally a Provision in which the Bombay Code was deficient, which, together with the Enactment in Clauses 212 and 213, were particularly required.

Chapter XI.

In the Offences relating to Coin I should have been inclined to have made the defacing of the Coin a penal Offence. The Practice is very common in this Country for petty Shroffs, who establish themselves in every Corner of a Bazaar or populous and much frequented Street, to prove, or what they term it, shroff Coins brought to them by the Public for that Purpose, and formerly they used always to stamp Coins so proved; this defaces the Coin, although it cannot be said to diminish the Weight or alter the Composition, Offences provided for in Clauses 246 and 247.

Chapter XII.

Chapter XIV. provides for many Offences affecting the public Health, Safety, and Convenience, which hitherto have not been punishable. The Punishment in Clause 257 for wantonly doing any Act likely to spread the Infection of a dangerous Disease appears, for so great and injurious an Offence, to be particularly light.

Clause 269 provides for the Punishment of Negligence in regard to Fire or any combustible Matter when by such Negligence there is a probable Danger to human Life. This, I think, is scarcely sufficient; I would have made it Danger to human Life or Property. In this Country the Destruction of Houses by Fire is very frequent, but the Loss of Life is very rare. Of all the numerous Fires which have occurred annually under my own Observation I do not remember a single Instance of the Loss of human Life therefrom. Clause 272 is particularly applicable and will be very often required in Practice.

Clause 274 provides for the Removal of Obstructions to the Highway, but not sufficiently so, as those must cause Danger, Annoyance, or Obstruction to those who pass. A very common Offence in this Country is encroaching upon the Highways, Roads, and Streets in building; the Evil requires Remedy by making the Offence penal. A partial Encroachment

by One Householder on a Street, say Twenty Feet broad, although an objectionable Offence generally against the public Convenience, can scarcely be brought within the Meaning of this Enactment.

Chapter XV.

In Chapter XV. several Offences are provided for which hitherto have not been penal. With the Exception of Clause 282, I think them all advisable, and peculiarly adapted to the People and Country for which the Laws are made; but this Clause 282 might, I think, be excluded; it almost amounts to a Prohibition to preaching of the Gospel. For it surely must be the deliberate Intention of every Preacher to weaken the Faith and change the religious Feelings of the Heathen; he must decry or censure the one, as he exalts the other Creed, and by so doing he must wound the Feelings of many. This Clause, I think, should be omitted; the Want of it has never yet been felt, that I am aware of.

Chapter XVIII.

Chapter XVIII. may be considered one of the most important in the Code; the First Class of Offences against the Body includes certain Omissions as well as Acts, the Line denoting which is admirably defined. The second mitigated Form of Murder, voluntary culpable Homicide by Consent, is peculiarly adapted to Cases likely to occur in this Country, such as Suttees, administering Medicine to procure Abortion, &c. &c. In short, all the different Divisions and Definitions of the Crimes provided for in this Chapter have been arranged with such Accuracy and Care, the Principles and Reasoning in the Note M. are so clearly and fully shown, that it appears to me that all that was required has been accomplished, and every Remark anticipated.

Chapter XIX.

The Crime of Gang Robbery is termed Dacoity in Chapter XIX., and is defined, in Clause 376, "where Six or more Persons conjointly commit or attempt to commit a Robbery." A Robbery is defined in the 375th Clause to be Theft, and Extortion when in committing the same Death, Hurt, or wrongful Restraint, or the Fear thereof, is voluntarily caused or attempted to be caused, and may be punished by Clause 379 with Transportation for Life or rigorous Imprisonment for Life, and must not be less than Three Years, and shall be liable to Fine.

Considering the present State of Society in this Country, and the great Prevalence of this most atrocious Crime, the dreadful Extent to which it is carried, and the serious Injury which is often inflicted individually and generally, and which in its Effects may often be considered more hurtful than many Cases of Murder, I regret to observe that the new Code allows of a more lenient Punishment than the old one, by which Death might be inflicted. I consider that there are many Instances in which the extreme Penalty of the Law is requisite; to take an Example:

The Leader with his Gang of Ten Followers come down upon several defenceless Villages at different Times; they torture the Inhabitants in their customary cruel Way, often by saturating Rag in Oil and winding it round their Fingers burn them to the Stumps, besides other Modes equally revolting; Hands and Feet are cut off, Ears are torn to obtain their Ornaments; in short, the Gang commits a hundred Atrocities, but not one with the Intention or Attempt to murder, and Death does not ensue. The Country around is in the greatest Alarm and Agitation; each Householder trembles for his Life and Property; the Police exert themselves to catch the Gang, which, as is generally the Case, for a long Time eludes their Vigilance, robbing a House in One District in One Night and a House in another District many Miles distant the next Night; the Inhabitants have not a Moment's Peace, they suffer almost to an equal Degree with the actual Sufferers of Torture and Robbery from their overwhelming Fears, and many lose all their Property and suffer grievous Hurt, Marks of which they bear to their Graves. At length the Gang is caught, tried, and convicted, and punished by the new Code with Transportation for Life. Surely in all such Cases Death to the Principals is desirable as an Example to the Country; the only Mode of making a Difference in the Punishment between the Leaders and Followers would be by reducing that to the latter the whole of which they generally deserve.

Transportation or Imprisonment for Life bears with it no vivid Example to the public Mind, to those sentenced and immediately concerned the former carries with it some undefined Notions of a Banishment to a Chaos similar to that which the early Mariners supposed to exist beyond certain Latitudes.

Again, a Gang of Fifteen or Twenty come down upon a Village and proceed to the wealthiest Inhabitant's House; he and his Family hearing the Noise outside the Village escape into the Jungle and conceal themselves, or the Family remain quiet in the House and are not interfered with; such Cases frequently occur. The Gang enters the open Door of the House and carries off all the Property and Valuables to the Amount of 40,000 or 50,000 Rupees. On Conviction of the Offenders the Punishment will be only rigorous Imprisonment for Three Years and a Fine under Clause 385; for many Gangs in the Conkan, aware of the Pusillanimity of the Inhabitants, very often commit these Excesses without Arms of any kind.

The Fine may be enforced, but with little Probability of its ever being realized.

I therefore consider that Offenders in these Crimes are not sufficiently punished by the new Code, and the Law in this respect is more simple and efficacious in the old Code; and I think also the Number constituting a Gang by the latter preferable, as the Description of Offences is at once defined, is much more heinous than Robbery by single Hands, and is, I think, more frequently committed by Five than any other Number.

By

By Clause 382, voluntarily causing Hurt in committing or attempting to commit Robbery, or in committing Dacoity, the Punishment shall be cumulative.

In respect to Dacoity this cannot be, as it is already provided for to the utmost short of Death.

Clauses 386 and 387, which relates to Criminal Breach of Trust, will, I should say, be very constantly required in Practice ; for unfortunately our Native Revenue Servants lose no Opportunity to misappropriate the public Money when they think they can do so with Impunity ; our Revenue System offers this Opportunity but too frequently. Hitherto this Offence was punishable to the Extent of Seven Years Imprisonment with Fine, by the new Code Three Years Imprisonment is the utmost, or Fine, or both ; I do not think the latter sufficiently severe, nor will the Provisions of the Clause reach all Offences. One is when a Revenue Officer makes use of the public Money for private Purposes, with the Intention of repaying it, for by Clause 386 the Offence is intending fraudulently to cause wrongful Loss or Risk of wrongful Loss to any Party, &c.

By Clauses 389 and 390 the receiving of stolen Property is made punishable with Three Years Imprisonment of either Description, or Fine, or both ; this I consider would be very lenient in many Cases. Supposing A the Receiver of stolen Property to a considerable Amount stolen by a Gang of Thieves, Five in Number, who were guilty of the most atrocious Acts in the Robbery, and of which A was aware ; but as Dacoity had not been committed, that is because there were not Six Persons and upwards concerned in the Robbery,—A can only be punished under Clause 390. The Receivers of stolen Property knowing the same to be stolen are, in my Opinion, quite as guilty, if not more so, in reference to the Injury they contribute to inflict on Society generally than the Robbers themselves. Were there no Receivers there would be fewer Robbers. In Districts where Robbery is frequent it becomes a regular Trade ; Offences are encouraged, and thus Discovery prevented.

The Provisions of Clauses 392 and 398 against cheating and fraudulent Insolvency are very advisable and efficacious ; so likewise are those for Criminal Trespass.

Chapter XXII. provides for the Punishment of the illegal Pursuit of legal Rights, and which was much required, as by the old Code a Person in good Faith believing a Debt due to him and taking Property to pay himself could only be punished for Robbery.

Chapter XXII

In Note P. to Chapter XXIII. Reasons are assigned for not punishing menial Servants who before the Expiration of the Term for which they are hired quit their Employer. Considering the peculiar State of Society in the East, I think a Law is required to protect both the Master and the Servants from unjust Treatment. Often are the former put to very painful Inconvenience and Annoyance by Servants refusing to go to a distant Station on the very Eve of Departure, although they had received sufficient Notice, and were before inclined to accompany their Master. Servants, on the other Hand, may be turned off on the mere Whim of the Master, at a Moment's Warning, at any Distance from their Homes. To correct the Evils in some Degree attendant on each, I should have recommended that a Month's Notice or Month's Pay be given, or a Fine imposed to that Amount.

Chapter XXIII

As far as the Law goes in reference to Offences relating to Marriage, I do not think that there are any Objections to it, but I do think that there are many Objections to its Omissions. Laws are framed for Rules of Action, to punish Crime and govern social Intercourse. As the Enactment stands the most sacred Law of Society, that of Marriage, is permitted to be violated, and the English in India are allowed to throw off that legal Restraint which governs them in England, and to live with the primitive Habits and Manner of less civilized Nations. Punishment is left to Society. Surely the Effect of most Laws is to govern Opinion ; and will not the Opinion of Society change with the Change of the Law ? I should fear it would, and the Subjects of that Nation which value and conforms to the sacred Law of Marriage more, perhaps, than any other in the World, may henceforward be pointed at as Examples of the reverse.

Chapter XXIV

Polygamy is so far allowed to the English in India, that provided no Deceit is practised no Penalty is enacted for the Crime, the baneful Effects of which it is needless to speculate upon. The Advantages resulting from its Abolition are forcibly touched upon by that eminent Lawyer and Historian Sir James Mackintosh in his History of England, in a passing Remark upon the Abolition of Slaves in France, which, he says, was "the only Disorder " which on the Continent disturbed the Emancipation of Peasants, the most extensive, " spotless, and beneficent Revolution recorded in History since the delivery of Women " from perpetual Imprisonment and uncontrolled Slavery by the Abolition of Polygamy " And yet this Practice may be renewed to a certain Extent.

The Provisions and Principles upon which the Law on Defamation has been framed appear most excellent ; and all that can be said has been said in that very interesting Note R.

Chapter XXV

The Law on Criminal Intimidation, Insult, and Annoyance will, I think, meet every Offence of this Description ; and the last Clause, 488, is particularly appropriate to the Vice of Intoxication in this Country. The Offence herein provided for is not punishable by the old Code.

Chapter XXVI
S.O.

I have offered the foregoing Remarks in all Humility and with the greatest Diffidence, as the Result of but that partial Study which Occupation in other Duties will only allow of ; they may be considered of little Weight when it is remembered that Men selected for

their Talents have devoted their undivided Time and Attention to the Construction of this Work.

The Greatness, the Boldness of the Undertaking, and the Accuracy, Care, and Talent with which it has been framed, must needs entitle it to the highest Admiration and Praise; the vast Difficulties to be overcome in framing a Code of Laws for many various Classes differing so essentially in Manners, Custom, and Feeling, the whole Plan adopted, the Perspicuity of the Language, its useful Illustrations, and those most valuable Notes, may altogether rank it as the First Production of the Kind in any Age or in any Country.

Holding this Opinion therefore, I consider, with the few Exceptions herein mentioned, that in this Code Provision has been made for all the different Offences which are prevalent in India, that the proposed Enactments are necessary and well adapted to the Circumstances of the Country, and to the Habits and Feelings of the People affected by them.

(Signed) G. GIBERNE,
Acting Second Puisne Judge

MINUTE by Mr. PYNE on the NEW PENAL CODE.

Bombay, 19th March 1839.

It would appear from the Letter of the Secretary to the Government of India, dated 13th April 1838, that it is not required of us to offer an abstract Opinion upon the Penal Code, but rather to confine our Examination to the Manner in which the Doctrines propounded have been reduced to practical Utility. I have, in the Discharge of the Duty imposed upon me, made such Observations on each Chapter as suggested themselves after an attentive Perusal of the Code.

(Signed) JOHN PYNE,
Acting Third Puisne Judge.

MINUTE by Mr. PYNE on the NEW PENAL CODE.

Chapter II.
Clause 57.

THE Limit of Six Years within which a Fine may be levied, is calculated to discourage the Industry of a liberated Culprit, and hence to defeat One chief End of Punishment, the Reformation of the Offender; and the final Provision of the Clause, that the Death of the Offender does not discharge from Liability any Property which would after his Death be legally liable for his Debts is visiting the Offences of the Delinquent upon his Children or Descendants, who may not be in the remotest Degree connected with his Crimes. For example, A is punished with Imprisonment and a Fine for committing the Offence described in Clause 196, and at the same Time of Sentence is possessed of no Property beyond the Implements of Agriculture or a joint Share in Machinery for carrying on the Trade by which he had subsisted himself and Family. The Expediency of levying the Fine imposed by Distringment of the said Articles would be at least questionable, but supposing this Clause to be adopted, it will be evident that the Offender has satisfied the Law with respect to the pecuniary Part of the Punishment to the very utmost of his existing Means; these may, however, have proved insufficient to secure him from the Provisions of Clause 52, and he therefore in his Person pays the maximum Penalty of Imprisonment for his Offence. As the Fine which may be imposed is unlimited in Amount, the Savings of Three, Four, Five, or Six Years may be no more than sufficient to meet the Penalty incurred, and as it may, indeed must be, levied by Distress, what possible Inducement is held out to the liberated Offender to pursue his former Calling, the whole Advantages derived from which are, as it were, forestalled? So far from having any Motive to abstain from Crime, and raise himself to the Position in Society from which he had fallen, his Efforts for Six Years are paralyzed, and the Habits of Industry, which he may have acquired under an efficient System of Prison Discipline, or the honest Resolution which may have been forced upon him, and which the recent Recollection of the Schooling he had undergone might constrain him to carry into operation, will be suffered to subside if they are not unfortunately supplanted by vicious Courses springing out of idle Habits, and the desponding Reflections consequent on the Inability he experienced to raise himself from the Depth of Poverty.

Though Instances, no doubt, will be met with where the Cupidity of the Offender may influence him to withhold the Payment of a Fine, preferring the Maximum of Imprisonment to parting with his Money, it would seem no difficult Matter, under the general Power given of subjecting to Distress any Property he may possess, to levy the Fine at once, or if Property really possessed by him was concealed, to render it liable in default of Payment when discovered within the prescribed Time; but as, for instance, where Cupidity is the Spring of Action fifty will I am of opinion occur where Inability is the Bar to compliance with the Court's Award, I am disposed to think that the Fine should be considered merged in the Commutation Imprisonment, where Property cannot be attached during the Time the Sentence runs or is not proved to have been concealed or fraudulently transferred; in short, that the Right of levying the Fine by Distress should not have a prospective Effect, at the imminent Risk of rendering a Man's Labour unprofitable to him for so long a Period as Six Years,

With

With respect to the latter Branch of the Clause, that after the Death of the Offender Property which would be legally held liable for his Debts is to be held liable for the Fine, I apprehend that the strict Enforcement of such a Provision would operate most harshly upon the Survivors, and be wanting in the essential Qualification upon which this Innovation is grounded, viz., to probe the Offender in the most sensitive Part, by making him disgorge a Portion of his ill-gotten Acquisition, or, if rightfully acquired, disburse from his Coffers the Wealth which he prizes higher than his personal Freedom. Either One of Two Feelings may be supposed to impel a Person to such a Course of Conduct, viz., Cupidity, or the more laudable Desire not to leave his Offspring destitute or curtail their Patrimony by his Criminality of Conduct; in the First assumed Instance, Death has removed the Victim of the Law from its Operation, the pecuniary Satisfaction demanded as the Penalty of Avarice is voided and rendered null; in the Second, the Benevolence displayed by the Culpit in suffering the Privation of Liberty in Expiation of his Offence rather than remotely injure his Children or Successors is deserving of Imitation; in addition to which it appears to me the most grievous of Laws, save perhaps in State Offences, that the Forfeiture of Rights should be extended to the Children or Successors of a Culpit on account of Offences which may have been committed before their Birth, or in which they were in nowise Participators. As the Enforcement of Fines by Distress belongs to the Code of Procedure, it would be out of place to discuss the Subject now, though Doubts arise as to the Practicability of carrying such a Measure into effect by summary Process, among a Community where the Subdivision of Property and Talent Rights of Individuals are so commonly met with.

S.O.

Were "grievous Hurt" limited to the First Seven Definitions of that Offence, the Right of private Defence against an Assault by which it might reasonably be apprehended that such grievous Hurt would take place might be taken as a Justification for Homicide; but, under the right Designation of the Offence, it is, I think, allowing too great Latitude to the Right of private Defence to suffer a Person to resist to the Death from a Fear of receiving an Injury which may render him unable to follow his ordinary Pursuits for Twenty Days. The Nature of the Assault against which a Person in Self Defence acts must be taken into consideration in extenuation or aggravation of the Homicide, and the Intention of the Aggressor will always be much more clearly developed by the Instrument made use of and other Circumstances, where permanent bodily Injury is contemplated, than where the Fear of the assaulted may magnify the Assault into the Apprehension of grievous Hurt. It appears to me that scarcely any Assault can be committed wherein the assailed may not justify an Act of Homicide under the right Definition of the Offence.

Clause 76.
Section 2d.

The Fear of being wrongfully confined for Three Days is made sufficient to justify Homicide in this Case. The Provocation of injuriously restraining a Person of his Liberty is unquestionably an Offence of a very grave Character, but it is of no uncommon Occurrence among Landholders, subject to the Law of Government but holding Estates Rent-free, to subject their Tenants to short Periods of Confinement, while they may be settling with them or others for Arrears on the current Year's Rent. To leave it to the Discretion of the Tenant to determine whether the Circumstances are such as will justify him in the Commission of Murder is, I am of opinion, placing in the Hands of a Person of vindictive Feelings a Right of Self Defence which may lead to lamentable and irreparable Abuse.

Clause 76.

"Grievous Hurt," for the Reasons assigned in the foregoing Observations, does not seem satisfactory as a justifying Cause for killing the Trespasser. The Qualification contained in the concluding Paragraph of Clause 75 may act as a restraining Power, but not in all Cases, I apprehend, with sufficient Effect where the Right of the Person invaded to repel the Attack by Homicide is recognized.

Clause 79.

The Provision contained in this Clause appears to be that the Intention of the Aider and Abettor must concur with the Act in order to make him amenable for the Offence committed, and that the Knowledge of this Intention can only be discovered from the Aider and Abettor himself, as unless he confesses that he knew a certain Offence was likely to be committed during the Perpetration of another Offence, he cannot be convicted of any Participation in that Offence, however indicative his overt Act may be of his probable Knowledge of what may take place. The Illustration (a) has put the Question beyond Doubt that the secret Thoughts of the Abettor must first be elicited before he can be convicted of the secondary Offence, which may arise out of the Commission of the primary one. In the Instance of Theft, it is provided in Clause 367, "whoever commits Theft, having made Preparation for causing Death or Hurt," &c. &c. The Preparation here alluded to is the Offender having provided himself with a Pistol; the Object with which he has provided himself with this Weapon, whether to cause Death, or Hurt, or Restraint, may not be positively known to his Aider in the Theft, who watches for the Purpose of facilitating the Theft, and if he denies that he knew it was likely to produce either of these three Effects he could not, I apprehend, be made a Participator in the Offence, though, under the ordinary Interpretation which could be given to such an Action, but little Doubts could be entertained in the Mind of a Jury that the Aider must have known that the Object with which his Comrade aimed was to produce One of the Three Events above enumerated. Where Results so naturally follow the Means used to produce them as to leave no reasonable Doubt on the Mind of their Fulfilment, I am inclined to think it should be taken for granted that the Aider in Crime knew that such Results

Clause 98.

were likely to take place, and though as by the Provisions of this Code in respect to Dacoity it may be unadvisable to subject an Aider to Capital Punishment, who may not have instigated to Murder or was present when perpetrated, though in prosecution of a common Design watching for the Preservation of his Accomplice, I would inflict on him the Punishment to Half the Extent of that which is provided for the Offence committed.

Clause 145. An Officer having Authority to commit Persons to Confinement, and who keeps Persons in Confinement, knowing that in so doing he is acting unjustly, does in other Words wrongfully confine such Person ; the Fact of his doing so under Colour of Office can be received as no Mitigation of the Offence, nor should his holding official Situation protect him from the penal Consequence of such illegal Act more than one not clothed with Authority ; I think therefore the Provisions of Clause 335, with the Exception of the minimum Punishment, might be made applicable to this Offence ; unjust Confinement by a constituted Authority is as grievous an Injury to the Sufferer as wrongful Confinement by one out of Authority. The graduated Scale of Punishment according to the Period of Confinement is well adapted to the Offence, for should the Confinement extend beyond Two Years it is evident that the Penalty contained in this Clause would be a very inadequate Punishment.

Clause 147. The Punishment here provided does not appear to me sufficient to deter Public Servants in charge of Government Money from employing it in any lucrative Speculation which may tempt them to infringe the Law.

Clause 148. The Facilities which are afforded to Public Servants of purchasing Grain and other Articles where the Revenue is taken in Kind at the annual Sales will receive by this Regulation, I am of opinion, no sufficient Check, and I should accordingly be disposed to increase the Penalty, the Offence being one which can only affect a Fraction of the Community, which almost imperceptible Fraction has legally bound itself not to transgress in the Particular noticed.

Chapter IX.
Clause 155. The Offence denoted in this Clause, though a Contempt of lawful Authority, carries with it no moral Turpitude, and should not, therefore, I am of opinion, be punished with rigorous Imprisonment, assuming this to be Imprisonment with Hard Labour, or attended with other degrading Circumstances. The Object contemplated does not appear to me so likely to be secured as by requiring Witnesses or others to enter into Recognizance or Security, which I conclude this Provision precludes Public Authorities from demanding.

Clause 156. A Mamuldar or Coolkurnee is legally bound to deliver up a public Paper to the Collector, but which, from having falsified or other Causes, he may decline to do. By our Revenue Law such Refusal subjects the Detainer of these Papers to Imprisonment until he delivers them up. To substitute One Month's Imprisonment in lieu of the existing Penalty is not only to render the public Records of Government very insecure, and liable at all Times to be withheld, but to create serious Inconvenience, if not positive Evil, to the Community, particularly the Agricultural Portion of it.

Clause 157. Under our Revenue Laws specific Penalties are provided in cases of Non-compliance with the Orders of Public Servants to furnish Information which may be required. By Section 25, Clause 2d, Regulation 16, 1827, a Person enjoying Land Rent-free shall have it assessed to the Public Revenue if he does not produce his Deed of Exemption for Registry on the Demand of the Village Accountant. By Section 38 of the cited Regulation, Land held exempt as Jagheer shall be liable to Resumption and Assessment if the Information called for in Clause 40 of the said Regulation is not supplied, which Information I conclude to be of the Description signified in Illustration (a) of the Clause in the Margin. It is not consistent that both these Enactments should continue in operation with respect to the Provision of the new Code. I think the Power of enforcing rigorous Imprisonment against Thagurdars and other respectable Landed Proprietors should not be permitted.

Clause 161. A Statement, as defined under Clause 23, "is made under a Sanction tantamount to an 'Oath' when it is made after an Admonition to speak the Truth." This Admonition to speak the Truth cannot, I conceive, have the same stringent Effect upon the Conscience of the Person admonished as if he were voluntarily to bind himself by an Oath, or Sanction tantamount to an Oath, to speak the Truth. Acting under such an Impression, or, perhaps more correctly, Delusion, a Person may state as true what he knows to be false, without violating, as he may consider, the Precepts of his Religion ; and will have no more Hesitation in signing such a Statement, especially with the Fear of Imprisonment before him if he does not, than he would in supporting any incorrect oral Statement that he may have given. But, since the Law declares that a Statement preceded by an Admonition to speak Truth is to be viewed as given under Sanction of an Oath, the Person so stating may, by Clause 188, be proceeded against for giving false Evidence ; and thus, from acting under a Misconception, must receive One Year's Imprisonment. That the Code recognizes a Distinction between the Force of an Admonition to speak the Truth and the Act of a Person binding himself by an Oath to speak the Truth, is evident from the Circumstance of a Refusal to perform the latter Act, subjecting the Recusant to a Penalty, which would be superfluous if the Admonition to speak Truth given by an Authority legally competent to require that an Oath to speak the Truth shall be taken were of concurrent Force with the Oath itself.

Clause 170. With reference to my Remarks on Clause 148, I question if the Penalty here provided is sufficiently severe.

The Punishment provided for this Offence is, I think, generally too lenient, and relatively so with regard to Clauses 105, 106, 107, of this Code. By the last Clause harbouring an Offender who has committed an Offence which may render him liable to Imprisonment for Seven Years is visited with as much Severity as rescuing an Offender from Custody, which must generally involve harbouring, who may have been convicted of a Capital Offence, or One who has brought upon himself Imprisonment for Life. As there is no Punishment laid down under the Chapter of Offences against "Public Justice" for rescuing a Person from Custody in which he is detained in pursuance of a Sentence of a Court of Justice, I conclude that Offence is embraced in Clause 173. If the Person aiding in the Escape is an Executive Officer of Justice, Provision should, I think, be made for enhancing the Penalty against him.

With reference to the Remarks in Clause 173, I think this Punishment inadequate to the Offence.

Without being acquainted with the Provisions of the Code of Procedure with reference to this Clause, it may be premature to say I would make the Rule absolute instead of dependent upon Disobedience causing or tending to cause Danger; as though the Restrictions may at Times be vexatious, but which before Promulgation might receive the Sanction of the Superior Court, local Circumstances may require that prompt Obedience should be paid to such Directions, the Non-acquiescence in which, though, if another Offence be committed, the Punishment may be cumulative,—may occasion far more Injury than the Penalty and Fine may expiate.

Under the Provisions of Clause 57, the Exception here given can scarcely be acted on without operating injuriously to some other Party, either directly or indirectly. In case of a forged Receipt, a Prisoner, by fabricating false Evidence, might save himself from Conviction, and thereby give an undeserving Value to the forged Document, to the Prejudice of the Prosecutor. Such an Offence, if detected, might fall within the Line of the Exception, but the very recognizing the Right of fabricating false Evidence seems to me holding out somewhat an Encouragement to its Adoption. In Cases of Theft, receiving stolen Goods, Peculation, Extortion, &c., if Conviction took place the Offender would have to refund in the Shape of Fine a Portion, if not all, of the ill-acquired Property, which, under the Penal Code, is destined to compensate the injured Party. The Fabrication of false Evidence, if successful in procuring the Acquittal of the Offender, would cause Injury to the Person plundered, by depriving him indirectly of such Portion of the Fine as might have been awarded to him in satisfaction of his Losses, and which might be recovered by Distress from the Malefactor's Property. The Right of pleading Not Guilty can never be denied to a Prisoner, or Exception be taken at a negative Declaration, however broadly expressed; but when in aid and support of his Denial another substantive Offence is committed, I cannot think it should have the Law's Sanction in support of it.

The Extension which has been given to the Practice of the English Law of Evidence by the Definition of what constitutes fabricating false Evidence in Clause 189 cannot fail, I should conceive, to produce the most beneficial Results in the Administration of Justice; but I should have some Hesitation in saying that every Declaration, unless the Force of this Term is narrowly defined, that may be Evidence of any Fact in a Court of Justice should subject the Subscriber to the Penalty here provided, though he may be aware that its Contents are not true. A Declaration which a Court of Justice is bound to receive as Evidence of any Fact is not, I think, sufficiently precise; it does not either specify that the Declaration is equivalent to an Oath, or does it require that it shall be legally administered; Points which, it seems to me, should be distinctly mentioned.

It is, I think, a just Distinction that "So long as an Act rests in *bare Intention* it is not punishable, but immediately when an Act is done the Law judges, not only of the "Act done but of the Intention with which it is done." The Possession of a Still is no Offence, but only becomes so when it is for the Purpose of Distillation contrary to Law. The Difficulty of proving the Purpose unless some overt Act takes place will always be great; and when this Act has taken place the Offence is brought under the Provisions of the preceding Clause. The Prohibition as it now stands is still calculated to cause a vexatious Interference on the Part of the Excise. The Bhundaree, for example, may draw his Trees for a Season, but from Incompetency to pay the Tax decline doing so the following Year; he may, nevertheless, have the Implements of his Calling in his Possession, with the view of using them hereafter when the Circumstances admit of his lawfully doing so; in the meantime, the Retention of them may expose him to the Charge of having them in his Possession for the Purpose of drawing Toddy.

The Offence here described is Smuggling, and the Principal engaged in it may be punished with Imprisonment of either Description for a Term which may extend to Three Months and a limited Fine, whereas by Clause 108, whoever subsequently abets the Offence by assisting the Offender to retain or dispose of the Property so smuggled may be punished with Imprisonment of either Description for One Year, and unlimited Fine: the Principle is at Variance with other Parts of the Code.

As an Offence, viewed solely with reference to the Revenue Laws, the Punishment is, I think, too lenient; when considered with reference to the daily Transactions between Individuals, the Punishment appears to me quite inadequate. The Guilt of a Person who makes use of a forged Stamp may not be so systematic or aggravated as that of the Person who makes a Practice of selling Stamps with the view of cheating others; but as

Clause 173.

Clause 178.

Clause 132.

Chapter X.
Clause 190.

Clause 195

Clause 213.

Clause 219.

Clause 222.

he is conscious of using with a fraudulent Intent as genuine that which he knows to be a Forgery, he is in the Commission of at least Cheating, which has for its Punishment One Year's Imprisonment; but I should be rather inclined to view the Offence in a still graver Light, and consider it as coming under the Class of those described in Clause 445, wherein it is provided whoever uses as genuine for the Purpose of Cheating any Document which he knows to have been forged shall be punished with Imprisonment of either Description, which may extend to Seven Years, &c. &c.

The Provisions of our New Code are to the above Effect. Clause 2, Section 17, Regulation 14, 1827, appears to me more consonant to Justice than those now objected to.

Clause 223.

By Clause 146, a Public Servant framing a Document incorrectly, knowing it to be likely that he may thereby cause Injury to any Party, is subjected to Three Years Imprisonment, &c. &c.; but if the same Person after having framed the Documents correctly, which Document is placed under his Charge, alter the Writing with the View specified in this Clause, he would, as it appears to me, for this aggravated Offence, receive only One Twelfth Part of the Punishment provided for an inferior Offence, in addition to the flagrant Breach of Trust, involved in such a Procedure, the most important Interests of Government may be sacrificed by tampering in this Manner with Vouchers written on Paper bearing a Stamp, the maximum Punishment for which Fraud is embraced in the very insufficient Penalty, as it seems to me, enacted in this Clause, unless it is essential to make so marked a Distinction between an Injury done to the Government and any other Party, I am not sensible of any Reason why such an Offence might not be classed under those defined in Clause 441; but since by the Provisions of Clause 58 the Punishment shall not be cumulative, unless it be so expressly provided, the Penalty therein sanctioned could not be enforced.

Clause 236.

If the Intention is provided, I think the same Gradation of Punishment should be preserved as exists between counterfeiting the King's or Company's Coin.

I think similar Protection should be given to Coins; the Law being express with respect to King's and Company's Coins, and silent with regard to Coin, leaves it to be implied that no Punishment is provided in respect to this Offence committed by Subjects of the East India Company, without the Territories of the said Company. Counterfeiting the Spanish Dollar and probably the Venetian, though no Enhancement of the Crime as a State Offence, might prove highly prejudicial to Commerce.

Chapter XIV.

Clause 257.

The Person *malignantly* guilty of the Offence herein designated appears to me deserving of the Penalties provided for the Offence described in Clause 294 in the Illustration to Clause 26. A. by setting Fire to a House in a large Town causes the Death of a Person, and this is Murder, because he knew he was likely to cause Death. Could a Person *malignantly* propagate Plague in a populous Town without believing it to be likely to cause Death? I think not; and would visit such a vicious Offender with the Laws of extreme Penalty. The Punishment, at any rate as it now stands, appears to me placed in juxtaposition with the Penalty provided in Clause 261, greatly too insignificant; in the one Case Malignancy is the Spirit which animates the Offender, in the other Penury may be the operating Cause, which, though not defensible in the Commission of such an Offence, deprives it of the essentially depraved Feeling which characterizes the other.

Clause 264.

I think the Term "offensive to the Senses" may give rise to many capricious Prosecutors. There are few but will consider the Smell arising from burnt Glue as highly offensive to the Senses, and yet it is too frequently encountered in all native Towns.

Clause 280.

I question whether the Extent of Punishment here provided is sufficient; the very Act of Trespass within the Walls of a Cemetery belonging to the Sect of Parsee would carry with it Defilement, and any Interference with the Remains, or an Indignity offered to a human Corpse, would be looked upon with Horror, and excite Feelings of Grief and Resentment, not only among the individual Mourners but throughout the Sect in general, as acute as Pollution of a Place of Worship could give rise to. It may be very possible to commit either of these Offences without rendering the Punishment accumulative by the Commission at the same Time of any other Offence, and I should therefore be disposed to enhance the Penalty.

Clause 294.

It is declared in Illustration (6):—A, with the Intention or Knowledge aforesaid, relates agitating Tidings to Z, who is in a critical State of a dangerous Illness. Z dies in consequence:—A has committed the Offence of voluntary culpable Homicide. It is manifest that such Tidings may be communicated without a Particle of Malice, and still with the Knowledge that the Narrator is likely to cause the Death of his Auditor. The Truth of this Position appears to be capable of being illustrated by a Passage I lately met with in the Memoirs of Sir W. Scott. I allude to the Condemnation of a Work of Sir Walter's by his Advisers. Mr. Cadel writes:—"If we did wrong we did it for the best. We felt to have spoken out as fairly on this as we had done on the other." Subject would have been to make ourselves the Bearers of a Death Warrant:" and Mr. Cadel afterwards expressed his Opinion that Sir Walter never recovered it. The Consideration of his Friends deterred them from harassing him by the full Announcement of their Opinions; but, allowing for an Instant that they had done so, and the fatal Result contemplated by Mr. Cadel had followed, I would ask if such a Consummation should have subjected them to be branded as Murderers?

Clause 296.

One of the distinguishing Features of the Code, wherein it differs from the Law of England, is the Reserve with which it subjects Offenders to Capital Punishment, though, by

by excepting, as it does in this Clause, Acts which would have fallen under the Name of Murder, it will probably, in an indirect Way, prove more destructive of human Life than a closer Adherence to the Rigour of English Law in this Respect would have produced. It is notorious that the most common Mode of offering Insult among Natives of all Classes, is by the Display of contemptuous Gestures, and the Use of irritating Abuse; a Habit so inveterate, indeed, as to lose much of the Offensiveness which would mark it when addressed to Communities more sensitive and alive to this Description of Annoyance. An Indignity offered to a Person in a more civilized State—by a Reflection upon his Integrity, an Imputation upon his Courage, or a Stain upon his Honour—might excite in the Minds of such Men sudden Gusts of Passion which the Law scarcely might control; but upon the Mass of Indian Society the Refinement of Feeling which bars such Attacks is wanting; and no Gestures, Words, or Signs could, I conceive, raise in their Minds that Indignation of Feeling at unmerited Reflections which would justify the Commission of voluntary culpable Homicide, under the Plea of “grave” Provocation emanating from such a Cause; and I am therefore disposed to think, from the Obtuseness of Feeling which pervades the Community on this Head, that the most grievous Reproaches would not exonerate the Party offended from the Guilt of Murder, if in resenting them he made use of any deadly Weapon with the Intention of producing Death; and it is, moreover, highly essential to the Security of Life, that no such Opening of committing Murder under a Mitigation of Punishment dependent upon contemptuous Gestures, contemptuous Actions, or insulting Words, should be held out to the native Community, as, from the inbred Tendency of the lower Classes especially to give unrestrained Freedom to the most indecent Invectives, the deliberate Murderer may, by the Exercise of a little Ingenuity, reduce his Offence to the Grade of Manslaughter; and I am quite disposed to concur with Mr. Livingstone in the Extract cited in Note M., that no Words whatever of Derision or Contempt, no Assault or Battery so slight as to show that the Intent was not to inflict great bodily Harm, should be received as any Palliation for Homicide.

With respect to voluntary culpable Homicide by Consent, the Exception in favour of Suttee rests, perhaps, more upon Grounds of Expediency than any legal Propriety; but with regard to all other Cases, wherein Suicide is committed at the Persuasion or Instigation of another, the Malignancy of Heart which can propose such a Step does not, in my Opinion, render the Instigator a fitting Object for any Leniency. The Distinction drawn is one, too, which may possibly be taken Advantage of with Success in defeating the Ends of Justice, as in how many Instances, in Death by Poison, on the Detection of the Murderer through a Chain of Evidence which can leave no Doubt of his having procured the Drug and been seen in Communication with the Victim, may he not plead, in Bar of Capital Punishment, that the Potion was administered with the Deceased's free Consent? and as, in the Plurality of Cases where Death is caused by free Consent, only the Parties themselves are cognizant of the Act, how difficult may it prove to rebut such a Plea!

It is to be collected from this and the following Clause, that Death caused in the Commission of an illegal Act, however rash and heedless that Act may be, if not contemplated by the Offender, is not Homicide. It is possible to conceive Circumstances under which the Ravishment of a delicate Woman would in all Probability be attended with fatal Consequences; and Instances are not wanting, wherein brutal Excitement has led a Plurality of Ravishers to violate a Woman's Chastity. To cause Death by such Means appears to me an Offence equally grave with voluntary culpable Homicide. Take, for example, Rape committed on an Infant Six or Seven Years of Age, from which Death ensues. A recent Case of this Kind has been before the Courts. Is any Penalty of the Law too rigorous for the revolting Cruelty of such a flagitious Offence? Instances of lustful Violence, when a reckless Disregard to Consequences is manifested, I think the Punishment of Death, Transportation for Life, or Imprisonment for Life, should be played at the Discretion of the Judge, who would be guided by the Circumstances of the Case in adjusting the Sentence.

Clause 304.

This appears to me to be one of those Cases in which, if Death takes place from the Effects of an Intent to cause Miscarriage, it is difficult to distinguish from Murder; and I do not consider that the combined Penalties provided in this Clause and Clause 304 are sufficient to ensure that Degree of Caution which the Preservation of human Life demands.

Clause 312.

The Offence described in this Clause appears to me of a deeper Dye than the one defined in the preceding Clause, and yet, if not aggravated by “Hurt,” is not liable to any greater Severity of Punishment. If the Offence is committed without the free Consent of the Woman, Punishment might, without any undue Harshness, be doubled.

Clause 313.

The minimum Punishment with reference to what constituted grievous Hurt under the Eighth Definition is, I think, too extended. A very trifling Injury to the Hand or Foot may prevent a Clerk or Labourer from following his ordinary Pursuit for Twenty Days, it may, in fact, not prove of greater Severity than a “Hurt,” which, in conjunction with Extortion, is expiated by One Year's minimum Imprisonment; it may be less severe than such a Hurt, but owing to constitutional Peculiarity may preclude the Sufferer from following his ordinary Pursuits for the Time specified.

Clause 322.

I should prefer, even in this mitigated Form, to see the minimum Punishment omitted. “Grievous Hurt” cannot be estimated until the Expiration of a certain Period after the

Clause 324.

Injury has been inflicted, and in trivial Hurts it will always be difficult to define whether they are to be brought under the Class of Hurts or grievous Hurts,—in ordinary Cases the Result must prove the Criterion. If under the Eighth Definition a Person should voluntarily cause an Injury by the Punctures of a Pin, which Injury should turn out to be “grievous Hurt,” a very venial Offence cannot be dismissed under less than One Year’s Punishment. The Definition of “grievous Hurt” is so specific, and the Rule is so absolute as to the Punishment, that if the Fact of “grievous Hurt” is made out the Offence is completed; though, in contradiction of the Principle which elsewhere governs Acts, the Intention was at variance with such a Result. To apply the Illustrations (t), (u), (v), Clause 363, an Offence is committed in each of these Cases, contingent, however, upon the Impression of the Offender as to whether he was committing an Offence: carry on the Parallel, the Impression on the Person’s Mind who punctures another with a Pin is that it will not produce “grievous Hurt,” but it turns out contrary nevertheless; if, in the Instance of Theft, the Impression on a Man’s Mind that he is committing no Offence, is to shield him from the Consequence of an Act which otherwise would be Theft, the like Consideration should be extended to a Man who commits an Assault, which he conceives will only produce Hurt, when it, in fact, produces “grievous Hurt.” I would also remark, without Levity, that under the Definition of the Eighth Head, Disease voluntarily communicated by sexual Intercourse would lay the Offender, if not open to the Penalties of this Clause, to those of Clause 319, and submit whether “grievous Hurt,” arising from the Indulgence of Passion between the Sexes can with Propriety form a Subject for Penal Law.

Clause 356.

Kidnapping is a Crime so injurious to Society, under either of the Definitions given in Clause 353, but more particularly from the Territories of the East India Company, that I am inclined to think the Punishment here provided is too mild for the Magnitude of the Offence, the Object of which may be perpetual Imprisonment, an Aggravation of Crime unprovided for. The Facility with which Persons may be made away with, without exciting Observation among their Relations or the Police, has been lamentably exemplified in the recent Discovery of Thuggee, and once across the Boundary of the British Territory the Succour of the Law will rarely be extended to them.

With reference to Kidnapping being made for the Purpose, or liable to the Consequence of subjecting the Person to unnatural Lust, the utmost Penalty of the Law, short of Capital Punishment, does not appear to me too rigorous for the Offence. The Punishment provided in Clause 362 is, I am of opinion, both as to its minimum and maximum Proportions, more appropriate than the limited Period of Imprisonment set forth in this Clause.

Clause 359.

I would omit “or of Hurt,” under the Third Head of the Definition, inasmuch as the minimum Punishment is Two Years Imprisonment; where the Fear of the most trivial Hurt produces Consent, the Woman’s Reluctance or Chastity cannot be over great or rigid. The common Prostitute under a Mood of Caprice may refuse the Favours that have been bartered, and prosecute for a Rape, under Plea of yielding her Consent from Fear of Hurt; the Subject is one which does not bear Discussion, but I apprehend fictitious Cases might be got up which might render an Appeal to the Mercy of the Executive Government a necessary Procedure. In the Place of Hurt it might, I think, be specified that the Menace is such as to inspire Fear of great bodily Harm or “grievous Hurt.”

Chapter XIX.
Clause 364.

If the Punishment provided for “Theft” is in all Cases sufficient for the Offence, I entertain Doubts if the Penalties provided for this Offence in its more aggravated Forms can be so considered. To take the serious Offence of Housebreaking by Night, accompanied by Theft, the Punishment being cumulative would aggregate only Six Years Imprisonment, inclusive of Fine; if Housebreaking by Night is in order to the committing of any Offence, the Fulfilment of which is not accomplished, Imprisonment for a Term which may extend to Five Years is the maximum Penalty. Housebreaking may be committed by any Number of Persons with a view to Theft, provided the Act does not embrace any of the Qualities essential to Robbery, as defined in Clause 375. The Attack upon a House by a Gang of Thirty or Forty Persons may be conducted in such wise, and owing to the Fears of the Inmates often is productive of such Result, as not to bring it within the Line of Robbery, though all the Ends looked to in Gang Robbery are effected. Experience proves that on the first Intimation of a Gang approaching a House the Inmates take to flight, thus precluding the Possibility, by personal Contact, of the Provision contained in Clause 375 being brought into operation in Invasion of Property at Night by Housebreaking, though the Theft may be committed without causing Fear of instant Death, instant Hurt, or instant wrongful Restraint, all of which Aggravations may be wanting, though the Offence is committed in the Presence of the whole Household; for I conclude that the Trespass of One hundred Men, if they conduct themselves orderly, that is, use no Threats or Violence of a personal Description, though their Presence may inspire Fear, does not constitute the Offence defined as Robbery; and I would illustrate this by asking what is more common among Natives, when their House is broken into, than to thrust themselves into the first Hiding Place, or conceal themselves under their Coverlid or Beds until the Plunder is over and the Gang has departed? If the Propriety of the Distinction drawn between Housebreaking followed by Theft, and Housebreaking followed by Robbery is incontestible, and the Difference of Punishment accurately adjusted, I fear that Housebreaking by Theft, which is expiated by Four Years Imprisonment,

Imprisonment, will be converted in too many Instances into the graver Charge of Robbery, by the no very forced Process of the Person whose House has been plundered in his Presence, declaring that Attempts were made to cause instant Hurt or wrongful Restraint. The Essence of the Offence, whether attended by Theft or Robbery, appears to me to be Housebreaking by Night; and whoever enters a House by such Means, with a fraudulent Intent of Theft or Robbery, should, I think, be subject to the Punishment provided for the latter Offence in Clause 377.

The Value of the Thing taken, or the Circumstances under which it may be taken, are allowed no Weight in extenuation of the Commission of Theft by Conspiracy. The Punishment of Six Months Imprisonment is very arbitrary; we may conceive Instances under which implied Permission to take a Thing cannot be pleaded in Defence, and that under the strict Interpretation of the Law, Theft is committed, but coupled with such extenuating Circumstances as by no Means to demand rigorous Imprisonment for a Period of Six Months; A may conspire with B, who is residing on the Premises of C, to give him a Bouquet of Flowers, the Plants producing which are in the Verandah of C's Dwelling-house, the Consequence of this petty Pillering is inevitably Six Months rigorous Imprisonment. I think, as in Theft, discretionary Punishment might be left in the Hands of the Judge.

Clause 365.

The bare imagining of such a Device, if given Utterance to, carries with it such Abandonment of Principle that no Shadow of Leniency would I extend to the Fabricator, and, though a Departure from the Principle which marks corresponding Cases between Commission and Attempt, would apply the Provisions of the preceding Clause as regards the Punishment therein laid down to this Offence.

Clause 374.

The minimum Punishment being imperative renders the Provisions of this Clause unusually severe. A, during the Festival of the Hooly, when great Licence is allowed, plucks from B's Hand a Head of parched Corn of which he is partaking. This, under the Definition, is Robbery; among an unmannered People such Acts of wrongful Restraint must be of every Day Occurrence. The Theft may be expiated by a Day's Confinement, and this would be understood; but when this Theft, combined with wrongful Restraint, which is only punishable by Imprisonment of either Description for a Term which extends to One Month, is not to be less than Two Years rigorous Imprisonment, it cannot but excite some Degree of Consideration as to the Cause. When Robberies of such trifling Nature do take place, in most Instances the injured Party might not think it worth his while to walk Half a Mile to lodge his Complaint; but if he do so, the Offender must be sentenced to Two Years rigorous Imprisonment. In the Example given under Illustration (a), Clause 375, the minimum Punishment is proportioned to the Magnitude of the Offence; but where so many Shades of Difference exist as to the Nature of the wrongful Restraint and Theft, it might, I think, be left with advantage to the Discretion of the Judge to award such Punishment within the prescribed Limit as may appear expedient.

Clause 377.

The Exception made to the Receiver of stolen Property, transferred in the Commission of Dacoity, renders the Mildness of the Punishment provided in the Clause of less Importance; though, I think, the Receivers of stolen Property, which was known to have been obtained in the Commission of Gang Robbery, might be subjected to heavier Penalty.

Clause 390.

It is declared, whoever fraudulently induces a Person to alter or destroy the whole or any Part of any Document which is, or purports to be, a valuable Security, is said to "cheat." The Distinction between this Offence and that described in Clause 441, wherein it is stated, under the Fourth Definition, a Person is said to commit Forgery who causes any Part of any Document to disappear, intending that it may be believed in any Quarter that such Part never existed, is not to me very apparent; and a Person guilty of such previous Abetment should, I think, under the Provisions of Clause 88, as the one just cited, Clause 441, be arraigned on a Charge of Abetment of Forgery; but though, as I apprehend, he is guilty of previous Abetment of Forgery, the Offence is also that of Cheating; but since it may be doubtful under which of the Provisions the Offence may be brought by the Rule of Interpretation laid down in Clause 61, the great Disparity of Punishment provided in Clauses 394 and 395, and Clause 444, will operate in favour of the Offender, who notwithstanding has, by the Practice of Deceit, enhanced the Crime of Forgery.

Clause 392.

Efficacious as the Provisions of this Clause may prove in deterring insolvent Traders from practising the Fraud contemplated, they are so at variance with the Civil Code of Procedure on this Point, that I conceive some special Repeal of the existing Enactment with respect to Insolvency, should be published.

Clause 398.

Illustrations (e), (f), Clause 399, indicate that "Mischief" includes damaging, destroying, and casting away Ships, a Species of Offence which is, I think, inadequately punished by the Penalty here recorded; and this would appear to be indirectly acknowledged by the Provisions of Clause 415, wherein it is declared that whoever commits Mischief on a decked Vessel, intending to destroy that decked Vessel, shall be liable to Imprisonment for a Term of Fourteen Years. Considering that the chief Traffic of the Country in its coasting Trade is carried on in Vessels having no Decks,—that the Mocha Trade, formerly of some Importance, and still employing considerable Capital, is embarked on Vessels without Decks,—it appears to me barely sufficient Protection against

Clause 403.

Mischief which may be practised with less Risk of Detection than other Frauds, and which may be so much more serious in their Results.

Clause 410. The Term "less useful," which here constitutes the Offence, appears to me somewhat vague and indefinite as applied to Mischief directed against a Lighthouse or Seamark; any Injury maliciously done to these Signals, with the probable View of causing the Destruction or Loss of a Vessel, or any way prejudicing a Vessel, seems to me an Offence of a very grave Character, and manifesting such little Regard for human Life as to be deserving of far higher Punishment than is here provided, unless, indeed, the general Provisions of Clause 294 are applicable to the Case, which I might not have questioned but for the specific Provisions of Clause 415, the Offence set forth in which might, with the same Propriety, be construed into an Act, the Commission of which the Offender must have known was likely to cause Death.

Clause 415. I can scarcely conceive an Act of Mischief done to a decked Vessel, intending to destroy that Vessel, or render it unsafe, without its being contemplated that the Lives of Persons would be placed in Jeopardy, and if this is so, the Provisions of Clause 294 cannot be more justly enforced against any Culprit than the one who could meditate such indiscriminate Loss of Life.

Chapter XX.
Clause 441. The Definition given under the First Head as interpreted by Illustration (a), appears to me to be deficient in its not being stated as essential to constitute the Offence, that the Alteration is made with Intent to defraud or prejudice another, as well as "intending " it may be believed in any Quarter that it was made by some other Person, or at some " other Time, or by some Authority by which it was not made." It will be observed, that the Words terminating the Clause "was made by some other Person," or "at some other Time" are in the disjunctive, and therefore apply to Two distinct Events quite independent of each other; that is, a Person who makes any Document, or Part of any Document, intending it may be believed that such Document, or Part, was made by some other Person, is guilty of a substantive Offence; so likewise, a Person who makes any Document, or Part of any Document, intending that it may be believed that such Document, or Part, was made *at some other Time*, is guilty of a substantive Offence. The practical Results of this Law may thus be exemplified:—A may contribute to a charitable Institution, desiring it to be believed that the Donation was made by his Son, or Friend, in whose Name he transmits it. It might readily occur that the Individual A, in the Performance of a charitable Act, might write a Letter signifying the same on a Sunday, but post or ante-date it, intending it may be believed it was written on the Day it bore Date, or, in the Words of the Definition, intending "that it may be believed that such Document past (Date), or Mark was made *at some other Time*." With reference to the Deceit practised as to Time the Document is a Forgery, nor do I perceive how adopting the First Maxim of Interpretation, that the literal Meaning of Words is to be taken, any other Construction can be placed upon the Sentence. If this Exposition is correct, Forgery is committed, and A has subjected himself to be arraigned on the Charge, and as a legal Consequence must be convicted in the Penalties provided for Forgery. The distinguishing and indispensable Feature is, that it was made with the Intention of causing Injury to a Party, from whence it is to be deduced that without this Ingredient no Punishment can be inflicted; there is none certainly provided. It follows therefore that a particular Act forbidden by the Law is designated, that the Commission of such Act constitute an Offence, but that no Penalty is provided on Conviction. If this is considered Hyper-criticism I have but to plead the Illustration given in Note M, in regard to a Surgeon being summoned from Calcutta to Meerut, and which, though a legitimate Deduction from the Text of Mr. Livingstone, is not more likely to have been brought before the Courts than the imaginary Cases I have above cited.

It might have been more in order to have made the following Observations upon Clause 146. The Offence described in that Clause, and the Definitions of Forgery recorded under the Second Head of Clause 441, appear to me one and the same Offence. It is declared, indeed, that if any other Offence is committed by a Person committing an Offence under Chapter VIII., that the Punishment shall be cumulative; but this Enhancement of Punishment, I apprehend, alludes to the Offence being of a distinct Character, and not of a corresponding or identical Nature, which would bring it under the Provisions of Clause 61 in applying the Penalties. If A, a Public Servant, charged with the Preparation of a Document, frames a Document in a Manner in which he knows to be incorrect, intending or knowing that he may thereby cause Injury to any Party, and if this Incorrectness consists in a voluntary Omission, it must partake of the Offence set forth in the 2d Definition of Clause 441, viz., intending it may be believed in any Quarter that the Document is made according to that other's Direction. For instance, if the aforesaid A, being directed by his Superior to make out a Receipt for B, who has paid 200 Rupees on account of the Revenue, should, with the view of injuring B, enter the Amount received at One Half, and pass a Receipt for that Amount only, without intending himself to benefit by the Overplus which he lodges in the Treasury, A has, I think, distinctly rendered himself liable to the Penalties of Forgery; but at the same Time he has as distinctly committed the Offence described in Clause 146, and cannot therefore be exposed to higher Punishment than is sanctioned by the said Clause under the Exposition laid down in Clause 61. From the general Tenor of the Reasoning adopted in Note 8 this may have been in contemplation, but if so, there does not appear to me anything in the

the Circumstance of a Public Servant which may extenuate the Offence of Forgery so immoderately as to justify the existing Difference in the Maximum of Punishment provided in Clause 146 and Clause 444.

The Description of Forgery noticed in the preceding Observations may perhaps be more readily committed by the Sheristadar of a Court of Justice in drawing out a Decree, where an Omission intended to injure a Party may, with a little Ingenuity on the Part of the Writer, be concealed from a Judge, which if detected under ordinary Circumstances would constitute Forgery, but in the Case of a Public Servant would fall under the Class of Offence described in Clause 146.

Clause 445.

I am inclined to question the Adequacy of this Punishment with reference to the important and unlimited Confidence reposed by Native Merchants in their Gomasthas, who, by the Practice of the Offence defined, might create such extensive Mischief to their Employers; nor am I sure that the Interests of Government, intrusted as they are by the Deposit of all Records, inclusive of valuable Securities, to the almost uncontrolled Charge of Public Servants, will be sufficiently protected by these Penalties.

Clause 452.

(Signed) J. PYNE, Acting Third Puisne Judge

MINUTE by MR. GREENHILL on the NEW PENAL CODE.

Bombay, 18th March 1839.

1. That it is desirable to obtain Comment on the Code submitted for the Opinion of the Judicial Servants of the Government is so well set forth in the Address of the Law Commissioners to the Right Honourable the Governor General, that I shall not take up Time in excusing the few Remarks I am to make on several of its Parts, which under other Circumstances might have subjected me to the Charge of Presumption.

2. The Arrangement in Chapters and Classes of Crimes I think is excellent, and the Explanations and Illustrations highly useful and important. The Language is precise, and although Repetition of Words and Phrases frequently occurring may give it a Character of Harshness, yet Clearness is of such vital Importance in Legislation, any Sacrifice of Style should be made to obtain it. It is in a few Parts somewhat obscure and difficult, and it seems desirable that wherever this may be thought to exist some Amendment should if possible be made. The whole requires considerable Study to master its Comprehensiveness. Many educated Englishmen will not, I fear, fully understand all its Clauses, even with Study; and the great Difficulty that will attend its true Translation into other and numerous Languages will render it still more inaccessible to Natives. But these are Objections which I apprehend are more or less common to all Codes; and it may fairly be left to those who contemplate the Commission of Acts perceptible to all Men as criminal to discover the Nature and Limit of the Penalty attached to them. To the Mass of the People in this Country it will no doubt be what the Laws of Caligula were to the Romans, when they were written in a very small Character, and hung so high that they could not be read. The Code may be published in Form, but it will be, as all our existing Laws probably are, understood only by its Operation.

3. I consider the Code generally to be perfectly practicable, where understood; and I would not anticipate any Difficulty by its immediate Introduction, provided the Law of Procedure relating to it were also enacted, there being some of the Provisions which could not be carried into effect without it.

4. I now proceed with my Remarks: and, rather than lengthen my Observations by introducing the Substance of each Provision, I shall merely quote in the Margin the Chapter or Article commented on, supposing the printed Code to be in the Hands of the Reader.

It is intimated in the last but Four Paragraphs, that none of the Sovereign Houses of India are excepted, and I am therefore induced to doubt whether Foreign Ambassadors, and that Class of Persons universally exempted from the ordinary Operation of the Laws by the Law of Nations, may not be considered to be included likewise; and in the following Paragraphs but One it is specified, that the Code will be applicable to "Soldiers," which suggests a Doubt whether the Mutiny Act does not preclude the Indian Government from legislating for them, i.e., if British-born Soldiers would be included.

The address to the Governor-General.

There is no Explanation as to whom the Code is applicable. In its present Form and by its Letter, the Emperor of Russia, if taken in War, might be transported under Clause 109, and Parties might be punished under all the other Provisions for Crimes committed in Foreign Kingdoms by Foreigners, if afterwards within the Company's Jurisdiction. It may be intended to declare its Applicability in the Code of Procedure; but it may be considered whether it should not be provided for here, on the same Grounds that many other Explanations are given; "Public Servants," for instance.

Chapter I.

Deeds, Bonds, Jewels, &c. might be given to an Idiot, and *without* the Knowledge of the Guardian. "With the Knowledge of Guardian or Guardians" should perhaps be added.

Clause 18.

A printed or lithographed Paper, bearing the Seal or stamped Signature (of a Person unable to write) of the Executor, would not be a Document. I allude to this, as Seals are used in India without Handwriting.

Clause 21.

- Clause 32. By this Clause I apprehend that the Son of Indian Parents who had been born at Malta or Constantinople, but ever afterwards a Resident of Asia, would not be of "Asiatic Blood," and might therefore be banished from the British Territories, under Clauses 43 and 44.
- Chapter II.
Clause 48. This would be quite incomprehensible without the Explanation afforded by the subsequent Clause, 96, which should be referred to by Note or otherwise.
- Clause 49. If A's whole Property, existing in possession, and in prospect by Succession or Inheritance, be taken in Forfeiture, and Ten Years afterwards A acquires Property by his own Industry, is it to be forfeited also?—that is, does the Forfeiture last for ever? The Illustration does not go so far; but if it be so intended, another Illustration should be given; if not, the Clause should, I think, be altered.
- Clause 56. I have also great Doubt of the Necessity of carrying it so far; and it may be requisite to consider what Effect the Forfeiture would have, or is intended to have, on the Hindoo Laws of Inheritance, whereby the paternal Estate is entailed on the Descendants, and is not considered as the alienable Property of the Parents.
- Chapter III.
Clause 71. This is rather complex, and might possibly be simplified as follows:—"If before the Expiration of the Term of Imprisonment fixed in default of Payment a Portion of the Fine be paid or levied, a proportionate Period, or as far as the unexpired Term will permit, shall be deducted from the remaining Period of Imprisonment."
- Chapter III.
Clause 71. The Dedication of a Female Child to a Temple does not fall within the Exceptions. This might be done in good Faith, for the Benefit of the Child, according to Hindoo Religion.
- Chapter IV.
Clause 88. It is, however, notorious, that in this Country Dedication to a Temple is synonymous with Prostitution; and it may be deserving the Consideration of the Legislature whether the Dedication of Female Children to Temples should not be prohibited.
- Chapter IV.
Clause 88. A, a Revenue Officer, is about to survey or assess a Village. B, a Ryot, *believes* that A expects a Present, and that if he gets it he will decide favourably for B, but if not, that he will decide unfavourably. B presents him with a Bribe, to induce him to decide favourably, *i.e.*, more so than in strict Justice he ought to do. This would partly be an Instigation to corrupt Virtue alluded to in the Note (Page 37, last Paragraph), and would be punishable both by the Letter of the Law in this Clause and also in 90; but the Spirit of the Note would seem opposed to it. The Distinction is very nice, and may not be always understood.
- Clause 96. Suppose Five Persons assemble, and conspire to rob,—it may be a particular House or Person, or all they meet, or any House that may be unguarded. but are deterred from the actual Commission of Robbery, after proceeding towards a Village, or on the Road, by the Precaution of the Police or of Individuals; it is not clear whether any Act or illegal Omission would under these Circumstances have taken place. The Illustration does not apply to the Case.
- Clause 102. A private Person (in contradistinction to a public Servant, alluded to in Clause 101,) knows of a Crime to be or likely to be committed, and it is committed without his having informed the Police. Is this an *illegal* Omission? By 86 it is an Abetment, if *legally* bound to inform. 101 declares it an Offence in a *public Servant*.
- Clause 105. It might be advisable to state the Limit of the Punishment of the Offence for the Concealment of which this Clause is provided, it at present appearing to comprehend all; whereas the Concealment of an Offence punishable with Seven Years Imprisonment is liable to the same. (See 107.)
- Chapter VII.
Clause 127. Any Number exceeding Ten would seem by Clause 94. to be the Number intended to constitute a riotous Assembly.
- Chapter VIII.
Clause 138. A has done the Prince some Service, and the Prince makes him a Present for the *past*; has A committed an Offence?
- Clause 139. A has saved the Prince's Life by personal Exertion, or promoted the Welfare of his Child; the Prince gives him a Lac of Rupees as a Reward; is A guilty? If not guilty, this Law would seem to be defective, for it seldom could be shown that the Payment was not for some past Service, and the Motives could hardly ever be proved.
- Clause 142. The Difficulty of meeting all Cases may be insurmountable; but the above are stated for Consideration.
- Clause 142. Would not "private personal" be a better Expression than "merely personal" in contradistinction to public or official.
- Clause 142. This is an Offence extremely difficult of Proof, and besides having a Tendency to bring the Judgment Seat into Contempt, would put it in the Power of every dissatisfied Suitor to prosecute his Judge for an unjust Decision.
- Clause 146. Would not this be Forgery also under its Definition?
- Clause 147. It is not easy to define all that is Trade, and this Difficulty might put it in the Power of a Judge to punish when not intended by the Legislature. It would further appear rather to be a Misconduct more appropriately punishable by Dismissal or Suspension than to be treated as a Crime.
- Clause 148. This might also perhaps be left to Punishment as above, and in the Code of Procedure or in the Civil Code the Purchase declared void.
- Chapter IX.
Clause 156. A sues B for an Estate; C has the Title Deeds, or a Document by which A's Claim would be proved; C omits to produce it on the Order of the Court, and pays the Fine of 500 Rupees; has A no other Remedy?

A has the Custody of Survey Papers and Accounts and Deeds of great Value to Government, and refuses to deliver them up; can A be punished only as above?

A sues B; C only can prove the Claim, but refuses to answer, and he is imprisoned Six Months; does A lose his Suit without Remedy, or may C be called up, and on Refusal again committed to Prison, and so on till he answers?

Clause 160.

Bentham says, "that a Script or anything else the Forthcomingness of which is requisite for the Purposes of Justice should continue unforthcoming notwithstanding, and at the same Time continue in existence, is a State of Things which cannot have Place from any other Cause than an inexcusable Imperfection,—a voluntary Imbecility,—in the System of Procedure. Supposing it, for Argument's sake, put out of Doubt that a Man having any such Article in his Custody or Power wilfully persists in the Non-production of it, no Torture that he chose to submit to rather than comply in this respect with the Obligations of Justice could be too severe."

This includes a mere Lie, whether material or not, and as such is liable to severer Punishment than Falsehood material to the Point. See 195.

Clause 162

The Exception of Clause 201 should perhaps be noticed here, as this is general, and would include the other but for the special Provision of it.

Clause 175

A Plaintiff who voluntarily takes Oath to the Truth of his Claim, either in the Presence of Defendant or ex parte, might come under this Definition, although by the Note C it does not appear to be intended. By the Bombay Code, I would remark here, a Plaintiff is in such Case liable to the Punishment of Perjury and that an Instance of its Infliction has occurred.

Chapter X.

Clause 188.

These Clauses might be found to clash with Her Majesty's Insolvent Act, if not saved by special Reference or by an Exception, the Trustee under the said Act having been held by the Advocate General to be competent to prevent Property being taken under a Decree at the Instance of other Creditors, before it is known whether their Claims be true or false. They might in fact be sham Creditors, for the Purpose of defrauding the Judgment Creditor of the Company's Court.

Clauses 193 & 19

I presume it is not intended that the Transfer or Sale should be voided by the single Fraud of the Seller.

A purchases a House from B, whilst B is sued by C for 1,000 Rupees. A knows of this Suit, and may think it likely that C may gain it; but he may at the same Time suppose that B can pay the Debt, or he may be indifferent, on the Presumption that if C wished to prevent the Sale of the House he would have attached it. Here B may have sold it to defraud C, but A committed no Fraud.

Unless the technical Meaning of "Banishment" and "Transportation" be given, this Clause might be considered obscure.

Clause 204.

I think the Words "or knowing it to be likely" should be omitted, as what remains may be sufficient. If retained, an honest Possession might be punished. See Remark on Clause 447.

Chapter XI.

Clause 218.

The same Remark applies to this.

Clause 219.

I rather incline to think the Confiscation should be included in this. The Offence is here defined, and so ought the whole Punishment to be prescribed. The Punishment of Theft in 364 might in a similar Manner be framed thus: "Whoever commits Theft shall be punished with rigorous Imprisonment for a Term which may extend to Three Years, or Fine, or both."

Clause 229.

Explanation:—"The Punishments provided by this Clause are independent of any other Punishment to which the Offence therein specified is liable under any Law." This would imply that there might be other Penalties for Theft than those specified, and leads to Doubt.

There is no Provision for the Confiscation of counterfeit Coin found in a Person's Possession.

Chapter XII

Why confined to a *public Way*? One Neighbour might offend another grievously, although not near a public Way. And how is the Nuisance to be removed; this not being distinctly provided for? I can instance, from my own Knowledge, the Introduction of putrid Matter to the Neighbourhood of private Houses, so offensive and noxious that Individuals became sick, and must have fled from their Houses on the instant, had not the Nuisance been immediately removed.

Chapter XIV

Clause 264.

It might be useful to refer to the Clauses providing for the Removal of the Danger.

Clause 272.

European Foreigners transgressing is not provided for.

Chapter XVI.

It might be advisable to make some Provisions for the Preservation of public Roads which are liable to be cut up and ruined by the use of improper Wheels.

I understand this Clause to include fatal Duels, and yet it may be argued that the First Provision excludes it, by the "Injury" to the "Reputation" which may be said to be the Cause of Duels in general. If it do not come within it, I am at a loss to say what the Offence would be, and under what Clause Duels would come.

Chapter XVIII.

Clause 298.

The Punishment in this Clause appears to be unnecessarily severe for the Object to be gained.

Clause 301.

I understand this Clause to embrace Duels.

Clause 302.

I think this Clause would be improved by the Introduction of the Word "unintentionally" after "whoever."

Clause 304.

- Clause 305. The Explanation of this Clause appears rather to confuse than elucidate, and would be better omitted. I would venture to suggest the following, to take the place of both :—
 “ If a Person in attempting to do a certain Thing shall in such Attempt commit the
 “ Offence defined in the last preceding Clause, he shall be liable to the additional Punish-
 “ ment to which he would have been liable had he succeeded in doing that Thing.”
- Clause 309. As voluntary culpable Homicide may be Murder under this Clause, an unsuccessful attempt to murder cannot be punished more severely.
 I hardly think this is what is intended. The Illustrations indicate this, and the Punishment is at variance with 305 and 308.
- Clause 310. I think the Words “ gaining a Livelihood ” unnecessary and objectionable.
- Clause 312. This Clause does not imply that it is necessary that the Woman should be quick with Child. If intended, it should perhaps be specified.
- Clause 319. It might be advisable to add the Exception of the Right of private Defence.
 If a Nose or Rib is broken in a Prize Fight, or by a Boy at School in a premeditated Fight with another Boy, the Offender must be imprisoned by this Clause, without Remedy. I think where the Range is so great and the Degrees so indefinite it would be enough to fix the Maximum, and this I incline to think should be the only Limit in nearly all Cases.
- Clause 320. Is this not inconsistent with 309, whereby a Person firing at another with Intent to murder, but misses his Aim, is only liable to Three Years? But by this, if the Ball break the little Finger, he may be transported, and must suffer Seven Years Imprisonment.
- Clause 321. A, a Boy, in beating B, a bigger Boy, to make him give up (extort) a Mango or a Piece of Sweetmeat, dislocates a Finger. B, if complained against, must suffer a Year's rigorous Imprisonment. There is no discretionary Power within that Limit. Absurd Complaints are sometimes made, by Natives especially, and a Case of the Kind supposed might embarrass the Judge. The Law should not be open to any Misapplication, if possible.
- Clause 323. Would this include a pointed Piece of Wood? If it be intended to confine the Penalty to an Instrument the Point or Edge of which is Metal, it should perhaps be so stated.
- Clause 324. The same Remark applies here.
- auses 325 & 326. If these Clauses be meant to refer to the Persons who did not give the Provocation only, it would, I think, be better to make it more distinct.
 It might be advisable to state when public Officers, acting officially, are excepted.
- Clause 330. And “ less than Ten Days ” should, perhaps be added.
- Clause 331. As this and Clause 309 stand, under my View of their possible Interpretation, the
- Clause 343. Offence defined in the former appears to come under the latter, and yet the Penalties are very different, and that for the graver Offence the lightest.
- Clause 348. “ To dishonour ” does not appear to be sufficiently definite; and if intended to apply to mere Insult, such as pulling a Man's Nose, or laying a Whip across his Shoulders, the Punishment seems disproportionate to the Penalties of the preceding Clauses.
- Clause 353. The Punishment of the illegal Sale or Purchase of Slaves is not provided for.
- Clause 359. Should the “ Hurt ” not be “ grievous ? ”
- Thirdly. If this is intended to mean that making the Woman believe he is her Husband he commits the Act, it might probably be more clearly expressed. If it be not so meant, I do not understand the Clause.
- Chapter XIX
- Clause 363. “ Obtained ” on an equivalent Term before Consent may be necessary to meet the Case of a Person allowing the Abstraction of his Property, when he could prevent it, in order to convict the Thieves. If not necessary, “ without that Person's Consent ” might be omitted, if the Word “ fraudulently ” be held to embrace everything intended, which I am inclined to think it does.
 Suppose a Person induces another to steal some of his own Goods, to injure that other Person, under the false Representation that they belonged to a third Party: here would be both Fraud and the Owner's Consent. The Code Napoleon excludes those Words.
 A, paying Money or delivering Goods to B, gives inadvertently more than is due, and B, knowing this, grants a Receipt for what was intended to be delivered only, suppressing the Fact of the Over-delivery, and thereby defrauds A.
 This is a Species of “ Theft,” or “ Cheating,” which is not clearly under either Head.
- Clause 376. What is the Meaning of “ present ? ” Is a Person watching Half a Mile off “ present ? ” Or would this be only Abetment, under Clause 97? In common Acceptation, and under 97 and this Clause, a Person watching in the Street whilst another was breaking open a House would be held to be present as much as a Person standing with a Light within a Yard of the Person in the Act of forcing the Door, did the Illustration of 97 not explain it differently.
- Clause 383. A Person appropriates Part of a Wreck or Goods washed ashore. The Name of the
 384. Ship or Owner not being known, he would commit no Offence, it is apprehended, under
 385. these Clauses.
- Clause 386. The Introduction of the Word “ fraudulently ” appears to weaken the whole. May not
 Illustration C. A use the Money honestly in his own Business, and for Z's Benefit, as much as the Bank of Bengal. This Misappropriation may ruin Z, because a wilful Disobedience of Orders, without Z's Knowledge or Consent, and, especially if concealed from Z, and used by A, ought to be punished. The Consequence of such Misappropriation, although not fraudulent, or capable of being proved so, being often most mischievous.
 It could not, however come properly under Clause 386, but it should perhaps be made punishable.

punishable. It is surely much more deserving of Punishment than trading by a public Servant.

“Or Thuggee” should perhaps be introduced before or after “Dacoity.”

This Definition appears to include Forgery.

This would come under 443, 444, and 449, but the Punishments all vary.

It may be doubtful whether a Person using false Dice or cheating at any Game was or was not contemplated as within this Section.

Suppose he had no Property, how would the Culprit alluded to in Clause and Illustration of 399 be punished under this Clause?

It is not very clear whether the Offence of Clause and Illustration of 399 could be punished under either this or 400. The Imprisonment seems insufficient in some cases, and is apparently very inconsistent with 406.

Would the following Illustration be apposite?

A rings the Bell, and on the Servant opening the Door enters without any Threat or Intimidation, would A commit Housebreaking?

A is engaged by B to collect certain Dues, and is directed to make a faithful Account of his Collections; A makes a false Account, omitting to insert all; has A committed Forgery?

A engages to make an exact or faithful Extract from Books of Account, and omits Part; has A committed Forgery?

A, a Prisoner accused of Robbery at Bombay on a certain Date, forges a Document to prove that he was then at Ahmednuggur; is A guilty under this Clause, with reference to Clause 190.

B sues C on a forged Bond for a Debt already paid, or that never existed; C forges a Receipt to disprove the Claim; is C guilty under this Clause?

The Act is neither to injure a Party, nor is the Defence of an Action an illegal Act, whilst none but injurious or declared illegal Forgery is made penal. It is not clearly “fabricated false Evidence,” under Clause 189, as it would be to cause the Judge to entertain a correct Opinion rather than an erroneous One of the Result.

A forges a Certificate in the Name of B, a Jeweller, that certain paste Jewels are real, and by means of that Document injures D, by inducing him to give the Price of real Stones; A has evidently committed the Offence under 445; but would it not come under 443 also? It is both an Injury and is to render an illegal Act easier.

“Knowing it to be likely” seems to me to be an objectionable Term. A Mechanic might make the Apparatus, knowing, if not cared for that they would be likely, &c. I think “intending” is sufficient.

Under which Clause does forging a Will come? If under 445 it is not considered so great a Crime as forging a Note for One Rupee although the Will might defraud to the Extent of a Million; nor even equal to concealing a forged Will. It does not appear to come under the Head of “valuable Security,” as the Distinction or Concealment of the One and the other is stated in separate Clauses.

This Chapter brings in a Person's Account Books, whether produced for the Owner or for or against a Third Party; and if this be not intended some Modification would seem necessary, or the Rules of Evidence should provide for it.

A lends B his Horse, owing B Money; B refuses to return the Horse till paid; under what Clause does this come? B does not take the Horse from A's Possession in the Manner punishable by the Letter of this Clause. It does not tally with any of the Illustrations of Chapter XIX., and it does not come under the Head of Criminal Breach of Trust, because it is not fraudulent and it rather belongs to the above Class.

May not this include all Contracts whatever for Conveyance, Ships, &c.? The Illustrations show what it does include, but there are none to show what it does not include.

This relates to Bullocks. Now there are Contracts made for the Conveyance of Merchandise of great Value by Bullocks. A, the Contractor, breaks his Contract, either for a better One, or from Inability or other Cause; B is injured thereby; has A committed the Offence?

A, Owner of a Ship, having contracted to carry a Cargo from Bombay to Calcutta, breaks his Contract, and injures B; has A committed the Offence?

These are of a Class not intended perhaps to be made penal, but the wording of this Clause is so general they appear to be brought within it.

The Policy or Propriety of this Provision appears to me doubtful. (See Remarks in Note R.)

A possesses the Machinery; B employs A to print or engrave for him; A is not aware of any bad Purpose; still A would be punishable. But why should the Intention or Abetment not be as necessarily a component Part of the Offence to render A punishable as it is for B?

There perhaps should be another Exception in favour of such Cases when the Author is given up.

There does not seem to be any Provision for the Punishment or Removal of Persons keeping disorderly Houses, which are often the Cause of great Annoyance to Passengers in public Thoroughfares.

See Remarks on the Note R.

Adverting to the Insolvent Act for India, I believe that a Discharge frees the Insol-

Clause 391.

Clause 392.

Illustration.

Clause 400.

Clause 403.

Clause 423.

Chapter XX.

Clause 441

Secondly

Clause 443.

Clause 445.

Clauses 447 & 44

Chapter XXII.

Clause 460.

Chapter XXIII

Clause 463.

(C.)

Chapter XXV.

Clause 470.

Clause 480.

Clause 485.

Note A, Page
vent last Paragraph.

vent from all future Liability for previous Debts, and differs in this respect from the Insolvent Law of the Bombay Code, which is in Principle the same as advocated in the Note, and in which I fully concur.

Note E.
Page 34, 2d Paragraph.

Dismissal would in many Cases be no great Punishment. A Man who got a large Sum, or who was retiring, would carry away the ill-gotten Wealth, in spite of Government. There might be some Disgrace attending Dismissal; but a plausible Story of Animosity and Injustice would lessen, if not remove, that; and the Man who would take the Bribe would bear with the partial Suspicion.

Note H.
Page 45, 2d and 3d Paragraph.

I do not see it in the Light in which it is here put. Confiscation is sometimes considered a sufficient Punishment in itself. It is a Part of the Punishment in all Cases. I see no Difference between Confiscation of Goods worth 100 Rupees and a Confiscation or Fine of 100 Rupees in Cash, or by the Sale of Goods when levied by Distress. All Offences relating to the Revenue are merely penal as causing indirect Loss to the State; and I do not see why, if One Part of the Punishment is put into the Penal Code, the whole should not be so. It is not necessary to make the Law an absurd One; and if A ought not to suffer, his Baggage ought not to be confiscated.

Note Q.
Page 91.

It appears to me that Wives should be sent back to their Husbands, when they have eloped with a Paramour, by the Criminal Courts, if demanded by the Husbands, unless lawfully separated. It is a most common Demand, and generally the principal Object of the Prosecution; but it does not seem to be provided for, although it would be quite in accordance with the very just View of the general Principle argued in Pages 10 and 82 of the Notes, and elsewhere.

Note R.
Page 97.

I would venture to doubt if the Preponderance of Good would be in favour of Exemption from Punishment to the Publication of injurious Imputations without reserve. On the other Side it may be argued, that it would prevent the Person becoming honest, and drive him and other Criminals to Despair and a Continuance in their Depravity. One of the strongest Reasons assigned in favour of the Seclusion System of Prison Discipline is to prevent the Misconduct of Prisoners from being known, that an honest Intention may not be thwarted. If the Good be the greatest, why should there not be a public Officer to publish the Offences of every Individual known to the Police or Courts of Justice, and Measures taken to pursue them wherever they go. Branding even might be again resorted to with still better Effect. Suppose a Woman who in her Youth had had a Bastard Child, but, being afterwards married, becomes highly respectable and virtuous, and esteemed in Society, - say as a Schoolmistress, a Person acquainted with the Fact announces it in the Newspapers or at a public Table (the Parties not being present), for the Purpose of injuring her both in the Estimation of the Public and of her Husband; there might be indirect Good by the Example flowing from this, but there would be much direct Mischief. Again, adverting to the supposed Case stated in Page 101, let us put the Exposure of the Woman's Irregularity inversely to it. The Court would address the Party thus: - You have told the Public a Truth which it did not concern the Public to know; you have been the Means of sowing Dissension and Misery in a most respectable Family, whom you have ruined - and if your Knowledge were extensive you would be a Pest to Society; and you have done this not from public Spirit, but purely for Revenge and to do Mischief; but what you have published is true, and as the Court does not care for your Motives, or the Effect on the Family, you are a public Benefactor, and discharged. But mark: had you repeated the Story which you have put in the Newspapers to a small Party when the Lady was present, or even in the Town Hall in the midst of 500 Persons, within her Hearing, from austere but injudicious Zeal for Morality, you would have been sentenced to Three Months rigorous Imprisonment.

Page 101.

Page 104.

The Argument of the last Paragraph but One holds the Intention to be everything, - the Truth nothing.

I have ventured to suggest Objections freely, admitting that, whilst I think it desirable that a precise Law should, if possible, be framed, to exclude all the mischievous Effects of the Licence given to the Publication of Truths, and to retain all the Good, I am not prepared to say how it could be done. Chapter XXVI. effects this Object in part only, and it may not be practicable to attain more. It may however be questionable whether it would not be preferable to make every Defamation punishable, it being left to the Judge, or the Jury, as might be, to decide whether it was for the Benefit of Society or of any Individual, or merely insulting, annoying, or injuring a Party. There is something analogous to this Reasoning in the Provisions of Chapter XIV., where Rashness, Negligence, or a Want of due Regard for Human Life are made punishable; but what is "Rashness," "Negligence," or "a Want of due Regard for Human Life" is left to the Judge or Jury to decide. I shall not intrude the Arguments adducible for and against the Suggestion, as they must readily occur to the Authority to whom the Consideration of the Subject belongs; and, but for the Absence of Remark in the Notes of the Law Commission on such a Mode, I should have looked upon the Suggestion as superfluous.

(Signed) D. GREENHILL,
Puisne Judge.

From

G. L. ELLIOT Esq. to CHARLES SIMS Esq.

Sir,

Court of Adawlut, Surat, 10th November 1838.

I HAVE the Honour to acknowledge the Receipt of the Court's Circular of the 29th May 1838, forwarding Copies of the new Code of Penal Regulations, and requesting my Opinion on their probable Efficiency.

To enter on an analytical Discussion upon the Merits of a Code like this would require far more Leisure than, with my various important Duties, I can command; and it would be presumptuous to pass a hasty Criticism on a System of Law emanating from the united Labours of Men whose Wisdom and Experience are universally acknowledged.

I have no Doubt that they are admirably well calculated for the Promotion of Justice and good Order, but I think that in reducing them to Practice many Difficulties will occur, both in adapting them to the Comprehension of the Natives and from some Technicalities in the Illustration in translating them into their Language, while the present Code, though perhaps less ingeniously formed, enjoys the Advantage of having been long in operation, and of being perfectly well understood, through the Aid of the Interpretations of the Sudder Adawlut.

I beg to forward Copy of a Letter expressing the Opinions, if they can be so interpreted, of Two respectable Native Functionaries.

The Sentiments of my detached Assistant, when received, shall be forwarded.

I have, &c.

(Signed) G. L. ELLIOT,
Judge and Session Judge

To G. L. ELLIOT Esq. Judge and Session Judge, Surat.

Sir,

WE have the Honour to acknowledge the Receipt of your Letter dated the 7th June last, forwarding a Copy of the new Penal Code, for our Opinion and Remarks.

We have attentively perused the Code, which appears to have been framed with such Wisdom and Prudence towards the more Civilization of the Community of India that any Comments on our Parts are deemed unnecessary.

We have now the Honour to return the Code, with our humble Opinions that your Honour will be pleased to recommend to Government that it may be immediately put into operation, and we hope that its Introduction may meet its long desired success.

We have, &c.

(Signed) J. DUNJEESHAI, Principal Sudder Ameen
A. DIUNJEESHAI, Sudder Ameen.

G. L. ELLIOT Esq. to P. W. LE GEYT Esq.

Sir,

Court of Adawlut, Surat, 29th December 1838.

IN acknowledgment of the Acting Register, Mr. Sims' Letter, dated the 28th ultimo, I have the Honour to observe, that when I offered the Remarks which the Judges have now requested me to support by Reason or Illustration, I had chiefly borne in mind the Disadvantages which must necessarily attend the Substitution of any new Penal Code, however excellent, for an old and familiar one, besides the extreme Difficulty which I could not but anticipate would arise in translating these Regulations into the Native Languages.

As far as I am qualified to judge, the present Bombay Code has hitherto been found to work extremely well, and it possesses this decided Advantage, that the People of the Country have lately, and I may say only lately, begun to understand and appreciate it. This is an Advantage which should not in my Opinion be hastily relinquished, even for the sake of a better and more enlightened System of Laws, with which they will long be imperfectly acquainted, particularly when we reflect on the slow and unwilling Admission of any Innovation that characterizes the Natives of this Land. For these Reasons I cannot view the entire Abrogation of the present Regulations without Regret and Apprehension, as the Motives which have actuated the Committee will not probably be at all appreciated by the People.

The chief Reason urged against the present Bombay Code by the Members of the Law Commission appears to have been the great discretionary Power left in the Hands of the Authorities. My own Recollection, however, furnishes no Instance in which that Power has been abused, nor is the Probability of its being so sufficiently great to form any solid Objection.

With respect to the Difficulty I anticipate in the Translation of the new Code, no one, I think, can peruse it carefully without being struck by the Division and Subdivision of Offences, particularly as detailed in Chapters XVII. and XVIII., nor can he, I think, fail to agree with me in thinking that it will be no easy Task to render these various nice Distinctions into the numerous Languages of India, and in adapting them to the familiar Comprehension of the Native Authorities and the People in general.

In offering the above Sentiments I would again beg leave to disclaim any Intention of detracting from the Merits of the new Code, which, the more closely it is examined evinces more evident Proofs of having been framed by Legislators of superior Wisdom and Ability.

I have, &c.

(Signed) G. L. ELLIOT, Judge and Session Judge.

W. RICHARDSON Esq. to G. L. ELLIOT Esq.

Sir,

Broach Adawlut, 31st January 1839.

IN acknowledging the Receipt of your Letter dated 6th June 1838, forwarding for my Opinion Copy of a Circular from the Sudder Adawlut, dated 29th May 1838, together with a new Code, I regret to state that I have not been able to obtain the Assistance or Opinion of any Native Gentleman at this Place, and have therefore been obliged alone to review this important Work. I am of opinion that the Penal Code is extremely good, and very properly lenient; and the only Objection which I can make to it is that in many Cases, if the Prisoner is found guilty, it is imperative on the Court to award a certain Punishment; for instance, it is laid down that Imprisonment may extend to Seven Years, but must not be less than One Year. This I consider painful to the Court, and unjust towards the Prisoners, as in many Cases it happens that there are extenuating Circumstances from which it would appear that the Punishment of the Crime should be very light, or even merely nominal.

I have, &c.

(Signed) W. RICHARDSON,
Assistant Session Judge.

B. HUTT Esq. to the Register to the Sudder Foujdarry Adawlut, Bombay.

Sir,

Ahmedabad Court of Adawlut, 5th April 1839.

I HAVE the Honour to acknowledge the Receipt of your Letters of the 29th May and 17th December last, and to observe that my Time has been hitherto too much occupied with the Duties of my new Office to admit of my devoting that Attention to the new Criminal Code which I could have desired, and that is necessary to any just Estimate of its Merits. The following are the only Points which on the Perusal of it I have noted, and these I submit with great Difference.

By Section 380 those assisting in Murder accompanied by Dacoity may be visited with a less Punishment than where simple Murder is committed; the Minimum in the former Case being rigorous Imprisonment for Seven Years, and in the latter, Section 300, Imprisonment for Life, so that an Inducement would seem to be held out to add Dacoity to Murder, unless there be any Provision I may have overlooked that provides for this.

Under Section 106 the aiding an Offence by causing Marks of its Commission to disappear are, I conceive, punished too mildly for a Person so doing, and especially in the Case of Murder, given in Illustration, must be regarded as assenting to the Deed itself, and will in most Cases be a previous Abettor, though it will rarely be possible to establish it, and as such Acts greatly Check the Detection of Crimes, the Interests of Society would seem to require greater Severity.

I nowhere discover an Explanation of who is to be considered as a Person expecting to be a public Servant. In Section 138 every Person who makes his Bow to the Collector or Judge of Zilla to solicit Employment might be considered as included.

I do not see sufficient Reason for adopting the Term Dacoity. It is as little known to the Native Population of the Bombay Territories as it is to Europeans. Gang Robbery with Force is as comprehensive, and would, I conceive, have been preferable.

As regards its Application to the Society who are to be subject to it, I perceive no Objection to its Provisions; abundant Protection from Insult is secured to Persons of every Religious Persuasion; yet the demoralizing Tendency which legalizing Bigamy has, must very much impair the beneficial influence which wholesome Laws might be expected to have in a Community like this, and it must be considered as a Matter of Regret that no better Provision can be made in a general Enactment.

There are no Persons resident in this Zilla sufficiently conversant with the English Language to read and understand this Work; I am therefore unable to submit any Opinion on it.

I have, &c.

(Signed) B. HUTT, Session Judge.

H. BROWN Esq. to BENJAMIN HUTT Esq.

(No. 206.)

Sir,

Rutnagirre Court of Adawlut, 29th September 1838.

I HAVE the Honour to acknowledge Copy of a Circular from the Register of the Sudder Adawlut, dated 29th May, transmitted by you on the 2d June, requesting me to submit my Opinion on the new Penal Code, and also to invite the Opinions of the most influential and intelligent Natives at this Station on the Work in question.

2. I beg

2. I beg to represent that to give Effect to these Instructions I have translated a very great Part of the Penal Code, in order that its Provisions might be made as comprehensible as possible to the influential Natives of this Town with whom I have held Conferences. I have nevertheless found it extremely difficult to convey in the Mahratta Language the Technicalities of Expression which it contains. In many Cases I have been obliged to abandon the Attempt altogether; and I should apprehend, without a clear and correct Translation, no substantial Opinion could be elicited on this important Work from any Native in this Part of the Country.

3. In Chapter I. Clause 5 the Union of the Sexes seemed unintelligible to the Natives, though I endeavoured to explain to them that the Applicability of the Pronoun "he" throughout the Code was intended to include the Female Sex.

4. The Word "Property," in Clause 17, was commented on, to ascertain whether it was confined to Funded Property alone, or to that of Land, Goods, and Chattels. This I think is a Point on which Disputes are likely to arise, and may therefore be worthy of Consideration.

5. Chapter II. Clause 40 rigorous Imprisonment I should conceive is intended to include solitary Imprisonment.

6. Considerable Discussion occurred amongst the Natives on Clause 60, and its Illustration A. They seemed alarmed that a gentle Correction given either to their Females or Domestic for Neglect of Duty or Carelessness might entail on them the Punishment therein specified. They argued that the same Exercise of Authority which a Father had over his Child should be extended to them in regard to their Household. It appears they were apprehensive that from the Malignity of a Domestic who wished to free himself from his Master's Service (as I understand Contracts are made for a definite Period for a certain Sum), on receiving a Cuff, would complain, and not only release himself from his Engagements, but cause the Law to take its Course upon his Master. My reply to this Line of Argument was, that no Individual had the Power to take the Law into his own Hands, for if it were not the Object of the Penal Code to check Oppression even of the slightest Nature, a powerful Man might cause bodily Pain from the Correction he inflicted, and would still claim Exemption from Punishment.

7. Clause 213 makes it penal for "any Person to have in his Possession any Implement "in order to the doing of anything which is an Offence under the last preceding "Clause." The Implement (a Koeta or Billhook) generally used for cutting Grass in this Part of the Country is also adopted for collecting Toddy, and by adhering to the Letter of the Penal Code would involve the Possessor of such an Implement to the Punishment laid down in this Clause.

8. Clause 216 specifies that whoever, being bound by Law to put any Mark on any Article in his Possession, omits to put such Mark on such Article, shall be punished with Fine, which may extend to the Value of such Article. The Law directs that all Country Craft or Trading Vessels should bear a Mark or Number. The Omission to do so under this Clause might involve a Fine (although it is discretionary) of a very considerable Amount.

9. Clauses 323 and 324 are in some degree ambiguous in regard to the Exceptions in the Cases provided for in Clauses 325 and 326, to which the former Clauses respectively refer. I do not perceive the Applicability of these Exceptions, as to causing Hurt and grievous Hurt, on grave and sudden Provocation, by means of any Substance which it is deleterious to the Human Body to inhale, to swallow, or to receive into the Blood, or by means of any Animal.

10. Clause 382 specifies if any Person voluntarily causes Hurt in committing Dacoity the Punishment shall be cumulative. The Punishment of the former must, I imagine, merge into that of the latter, should the Sentence be for rigorous Imprisonment for Life.

11. Clause 418, the Natives feared, would interrupt that social Intercourse which at present exists between Individuals in repairing to each other's Houses without having the Consent of the Person entitled to authorize such Entry.

12. Clauses 485, 486, and 487 produced a very anxious and lengthened Discussion amongst the Natives. They expressed Alarm at such comprehensive Provisions, and stated that no one was ever safe from the Clutches of the Law. The natural Failing amongst all Classes of Natives, which induces them to intermingle their Conversations with Utterance of some Words of Abuse, would henceforth be construed as causing Annoyance to the Person addressed, and subjecting them to the Penalties therein laid down. They, moreover, added, that the Scenes which occur at the Holec Festival would by these Clauses be abolished. In my Opinion no Regret ought to be experienced by any respectable Native at the Introduction of a Law which discourages by penal Enactments such Scenes of Obscenity as usually take place at this Festival, and I should hope they would in course of Time be induced rather to welcome an Act which affords Security that the Modesty of their Females should not be outraged during these Festivities. I am inclined, however, to anticipate that the Offences laid down in the above-mentioned Clauses will be of frequent Occurrence, and form a very common Charge in the Monthly Reports.

13. After having gone through the Penal Code in the Manner I have alluded to in the Second Paragraph, I was led to inquire what Opinion the Natives entertained of the numerous Clauses which had been explained to them during the Conferences I had had with them. They seemed unanimously to admire this valuable Work, but at the same

time considered that the Punishments laid down were too severe. This I explained to them was imaginary, as in every Clause discretionary Power was given to the trying Authority, specifying that the Imprisonment *may extend* to a certain Period, though the minimum Period to be awarded was limited in heavy Offences and Cases of deep Atrocity.

14. In offering my humble Opinion I consider the Work under Review as One of a most comprehensive and valuable Character. Whatever Parts may require Alteration will be more readily discovered when its Provisions are brought into Practice. The apparent Difficulty is, the Effect it may have upon the Civil and Revenue Branch of the present Bombay Regulations, as I perceive many Offences which have been cognizable in the Civil Courts are now made penal by the new Code.

15. I beg to claim Indulgence for having delayed so long in reporting on this important Work, but it has been occasioned by my endeavouring to make myself familiar with it, as I attempted to commence a Translation of it into the Mahratta Language.

I have, &c.

(Signed) H. BROWN,

Acting Senior Assistant Session Judge.

A. BELL Esq. to the ACTING REGISTER to the SUDDER DEWANNY and SUDDER
FOUJDAREE ADWLUT.

(No. 17.)

Sir,

Poona Court of Adawlut, Bombay, 25th January 1839.

I HAVE the Honour to acknowledge the Receipt of the Court's Circular Letter of the 29th May last (No. 727 of 1838), calling for my Opinion and Remarks on the new Penal Code, requesting me to invite the Opinions of the most influential and intelligent Natives at this Station, and to obtain and furnish similar Information from my Assistant detached at Sholapore.

2. The scanty Leisure which I am enabled to command from my Duty has been devoted to the Work in question, but the Pressure of other Business precludes the Possibility of giving the several Points therein discussed that full Consideration which their Importance demands.

3. It was neither my Wish nor Intention to have ventured an Opinion on this most important Work until I had had more Time and Opportunity of a practicable Application of it; but the Court's Letter of the 17th ultimo, received whilst on Circuit at Sholapore, obliges me thus hastily to commit to Paper the very few Observations which have as yet occurred to me.

4. The Difficulty of forming a correct Judgment on the Penal Code is very considerably enhanced by the Absence of the Code of Procedure, as there are many Points which appear to have been omitted, but which will doubtless be provided for on the Promulgation of that Enactment.

5. In Elucidation of what has been above advanced, I will just state the following Instance :—

6. Jurymen and Arbitrators are considered public Servants. Now, if it is intended to introduce Trial by Jury, certain Rules, it is presumed, will be laid down in the Code of Procedure to require the Attendance of Jurors and Arbitrators; otherwise it will be found to be, as at present, a dead Letter, for very few Persons will willingly attend in either Capacity.

7. In Clause 138 I think the Term "expecting to be public Servants" too vague and indefinite. What constitutes expecting to be a public Servant should be clearly explained; otherwise it will lead to Misconception.

8. The Punishment for receiving stolen Property, considering the very great Facility which exists of making away with it in this Country, is, in my Opinion, far too lenient. The Receiver should be punished equally with the Thief, for if there were no Receivers there would be no Thieves. "Dacoity" is a Term peculiar to Bengal, and should be defined.

9. There is no specific Provision against robbing the Mail, regarding which I am inclined to think there should be a separate Enactment, awarding a much heavier Punishment than in the Case of ordinary Robbery.

10. I conceive the fixing of a minimum Punishment objectionable. It is not an unfrequent Occurrence that the minimum Punishment is considered too heavy; but, as the discretionary Power allowed to the Judge is bounded by the Law, he is compelled to pronounce what he himself feels to be an unjust Sentence.

11. Some Parts of the Code appear to me decided Improvements on our Regulations; and I have not observed anything, beyond what I have above touched upon, which would in my Opinion be objectionable when brought into Practice.

12. In the Case of a Prosecutor suffering a heavy pecuniary Loss by a Prisoner's malicious Destruction of his Property, it seems consonant with Justice that the Court should endeavour to compensate the Sufferer as well as to punish the Criminal. To attain this End a Fine is inflicted, which our Regulations, however, leave it optional with the Prisoner to pay or to go to Prison, and thus (especially when the Prisoner

entertains

entertains Malice, and would prefer suffering Imprisonment to paying a Fine, which he knows the Court would award to his Enemy,) the Court's Intention is frustrated. For this the Penal Code provides an effectual Remedy, not only enabling the Court to compensate the Sufferer, but taking from the Prisoner the Privilege he at present possesses of choosing the Punishment which is least disagreeable or most convenient to him.

13. The Combination of rigorous and simple Imprisonment, as inflicted in England, is another decided Improvement.

14. No Translation of the Penal Code having been furnished, I have been prevented inviting the Opinion of the most influential and intelligent Natives in the Work in question.

An original Letter from my detached Assistant, dated 26th June 1838, is herewith forwarded.

I have, &c.
(Signed) A. BELL,
Judge and Session Judge.

C. H. PITT Esq. to ALEXANDER BELL Esq.

Sir,

Sholapoor Court of Adawlut, 26th June 1838.

IN acknowledging the Receipt of your Letter of the 2d instant, forwarding a Copy of the new Penal Code, and calling for my Remarks on it, I venture my Opinion with great Reluctance, feeling how incompetent I am to give one on such an important Subject; but, as far as my Judgment goes, and after an attentive Perusal of its Contents, I should say that the new Penal Code would be highly advantageous, and agree that it should be translated into the Native Language with as little Delay as possible.

I have, &c.
(Signed) C. H. PITT,
Acting Assistant Session Judge.

W. C. ANDREWS Esq. to CHARLES SIMS Esq.

Zilla Magistrate's Circuit Kutcherry Olpar Purgannah, Camp at Paul,
10th January 1839.

Sir,

IN obedience to the Call made upon me by the Court in your Letter of the 17th December last (No. 960), I have the Honour to state, for the Information of the Judges, that I have studied the new Penal Code as attentively as my other Avocations would admit of; and that, as far as I am capable of judging of it, it appears to me to be in every respect worthy of its Authors,—Men selected from the Services of the Three Presidencies, and presided over by one who was doubtless appointed to this Office as being one of the best Jurists in England, and who, it is evident from this Work, is deeply versed in the Science of Jurisprudence and Human Character.

2. To study the Production of such Men with the View of passing a Judgment upon it might well have been charged upon me as Presumption, had it not been imposed as a Duty. I can only regret that the Court's Requisition was left unreplyed to by my Predecessor, who is so much more competent to the Task, and whose Opinion, consequently, would have been so much more satisfactory.

3. To Principles on which the various Provisions of the Code have been framed, as set forth in the different Notes, no Objection can, I think, be offered; in fact they appear to be far superior to those which influenced other Legislators. In those Points in which this differs from other Codes it is only as to the practical working of some Parts that a Difference of Opinion could be entertained with reference to the peculiar Circumstances and Structure of Society in the different Parts of the widely-extended Empire to be subjected to its Provisions, and it is only in this respect that I would hazard an Opinion on Clauses 54 and 57.

4. Though not positively expressed, I presume that it is intended that the Power of levying a Fine by Distress be exercised immediately on passing Sentence, before the Expiration of the Seven Days Imprisonment; otherwise this Period would be just sufficient to enable the convicted Party to conceal, or remove his Property to the adjoining Territories of some Foreign Power, whither he would himself repair for the Period of Six Years during which the Sentence of Fine remains in force against him.

5. Even if the Power of levying by Distress be exercised immediately on passing Sentence, I believe the Experience of the Civil Courts would go to prove the Difficulty that is often found in discovering and attaching Property, and the Facility with which it may be made away with or concealed pending a Trial, and in anticipation of the Result. To reside in an adjoining Town or District of a Foreign Power for Six Years would often be little Punishment, compared with the Payment of a Fine; and therefore I respectfully submit, that unless the Period for which a Person's Property is liable be made exclusive of Residence in Foreign Territory, Parties will often escape, in the Cases contemplated by these Clauses, with no other Punishment than an Imprisonment for Seven Days.

6. As this Zilla, from being intersected and surrounded by the Territories of the Quickwar and other independent Rajahs, is peculiarly liable to Abuses of this Description, it has occurred to me to mention them, in case they should be considered worthy of Notice.

7. The bringing of this Code into operation will doubtless be attended with considerable Difficulties at first, arising from Circumstances wholly independent of the Code itself, the principal of which will be found to be in translating it into suitable Language, and to get our Native Officers to attend to the nice Distinctions with which it abounds, and to enter into the Spirit of many of the Provisions, even carefully illustrated as they are by Example; but these Difficulties will not be found insurmountable, and probably this Code will not be found more difficult to be understood now, by our Native Officers and Subjects, than were the existing Regulations at their First Introduction; and I certainly think that the Study and Practice of it is highly calculated to improve the moral Feelings and intellectual Faculties of our Native Servants.

8. Being on Circuit in the Districts, I am unable to take the Opinion of respectable Natives in Surat on the Subject; but this is of the less Importance as Mr. Elliot has doubtless already done so.

I have, &c.

(Signed) W. C. ANDREWS, Acting Magistrate.

J. H. JACKSON Esq. to the REGISTER of the SUDDER FOUJDAREE ADAWLUT, Bombay.

(No. 3.—Judicial Department.)

Sir,

Magistrate's Office, Ahmedabad, 10th January 1839.

IN reference to your Circular of the 29th May last (No. 727), handing up the new Penal Code, and requesting to have my Opinion as to its Merits, I must observe, that it would be presumptuous in me, in so short a Time; to pass a decided Opinion upon a Work which has engaged the Attention of some of the ablest Men in India for Four Years past, and in fact it would take a great deal more Time than the Duties of an Office would admit of, to examine it with that Care necessary to give an Opinion upon a Subject of such Importance. I may, however, advert to the Section on Fines, which appears to me a decided Improvement on the present System.

2. I must, however, with all due Deference, record my Dissent to that Part of the Chapter relating to Punishment in which Corporal Punishment is not laid down. As long as the Tone of moral Feeling amongst the Natives is so low as at present, and they do not dread the Disgrace of a Gaol, the Discipline must be made much more strict than it now is to operate of itself as any effective Check to Crime. At present the System is so lenient that the Culprit of the Description liable to Corporal Punishment, if that Punishment is abolished, and no more severe one substituted in its Place, so far from being deterred from committing Crime by the Fear of Imprisonment alone, will find it much more agreeable and comfortable to be in Gaol than out of it.

3. With regard to the Opinion of the Natives on this Code, there being no Translation in Guzeratte furnished with it, it was impossible for them to come to any Conclusion upon the Subject.

I have, &c.

(Signed) J. H. JACKSON, Acting Manager.

N. KIRKLAND Esq. to the REGISTER of the SUDDER FOUJDAREE ADAWLUT, Bombay.

(No. 95.—Judicial Department.)

Sir,

Kairah Collector and Magistrate's Office, 30th June 1838.

I DO myself the Honour to acknowledge the Receipt of your Circular Letter of the 29th ultimo, No. 727, transmitting Two Copies of the new Penal Code, and requesting me to submit my Opinion and Report on this important Work, to enable the Court to lay the same before the Government.

Since receiving the Code I have carefully perused its Contents, and am humbly of opinion that its Provisions are mild, equitable, and just; and from the Clearness and Plainness of the Language in which the Code is written, and the Ingenuity and Ability bestowed on it by the Law Commissioners, combined with the practical Judgment which they possessed, with every Information from all Parts of India, necessary for its Formation, before them, I think it reasonable to conclude that the Code generally will be found efficacious, and suited to the State of Society and the People for whom it is designed.

The most influential Natives at Kaira possess but little Intelligence; and without a Translation of the Code in their own Language it is in vain to expect an Opinion from them, and my own Time is so fully engaged that it is quite out of my Power to find Leisure to explain the Provisions of the Code to them, with any Prospect of obtaining Observations from them that would answer any useful Purpose.

I have, &c.

(Signed) N. KIRKLAND, Acting Collector and Magistrate.

R. K. PRINGLE Esq. to the REGISTER to the SUDDER FOUJDAREE ADAWLUT, Bombay.
(No. 24.)

Sir,

Tannah Magistrate's Office, 5th January 1839.

I HAVE the Honour to acknowledge the Receipt of your Letters of the 29th May last and 17th ultimo, calling for an Opinion on the new Penal Code.

2. I had reserved the Subject until I could find Leisure to bestow upon it the mature and deliberate Consideration its Importance merits; but, in the Multiplicity of current Business, I find it hopeless to expect this, and without it little Value could attach to any Opinions I might submit on so comprehensive, systematic, and elaborate a Work.

3. So far, however, as I can form a Judgment, from an interrupted and superficial Perusal, I think it a clear, wise, and good Code.

4. I have not attempted to obtain the Opinions of Natives on the Work, not being provided with a Translation, nor acquainted with any Native here who could appreciate it in the Original. I beg, however, to forward a Letter from my Assistant, Mr. Davies, conveying his Sentiments upon it.

I have, &c.

(Signed) R. K. PRINGLE, Acting Magistrate.

J. M. DAVIES Esq. to R. K. PRINGLE Esq.

Sir,

26th December, 1838.

IN reply to Mr. Simson's Call of the 4th of June last, and yours of the 21st instant, requesting my Report on the new Criminal Code, I have the Honour to state that I have carefully perused the same, and in my humble Opinion it is well calculated to ensure the Ends of Criminal Justice.

2. As the Applicability of any Code must mainly depend on the Capacity of the governed duly to comprehend it, so, while the simple and obvious Definitions of Crime in the new Code appear plain to every Understanding, there seems also small Risk of Offenders being able to elude its Provisions, or of the executive Authorities abusing their Powers.

I have, &c.

(Signed) J. M. DAVIES, Acting Assistant Magistrate.

R. MILLS Esq. to the REGISTER to the SUDDER FOUJDAREE ADAWLUT, Bombay.
(No. 344.)

Sir,

Magistrate's Office, Poonah, 15th July 1839.

I HAVE the Honour to acknowledge the Receipt of your Letter, No. 727, dated 29th of May last, requesting my Opinion on the new Penal Code, and also the Opinions of the most influential Natives on the Work in question.

2. From a Perusal of the Work, it occurs to me that the minimum Punishment which must be awarded in particular Cases is objectionable, as it may often happen that there may be mitigating Circumstances which may render it desirable that the very smallest Punishment would be sufficient for the Degree of Offence which the Party may have committed.

3. The Offence of Adultery does not appear to be punishable by the Code. I think this is a Defect. I have consulted many of the Natives, whose Opinions are worth anything at all on this Subject, and they have invariably stated their Opinion that it ought to be criminally punished. I am of the same Opinion. Every practical Officer knows the Consequences which often result from the Commission of Adultery; that it often leads to Murder, and frequently to sanguinary Acts of Resentment. To tell a Native to go to Law, and sue for Damages, is in fact to deny him Redress, and to point out the Way to his Ruin.

4. Of all the Complaints which the Natives make against our Law and Regulations, there is none of which they complain so loudly as that we do not punish Adultery. Till recently it was not considered a penal Offence, and went unpunished; and it was in consequence of the Representations from the Judge, above alluded to, of the Consequences which had resulted from the Course that had previously been adopted, that it was declared that Adultery was punishable by the Hindoo and Mahomedan Law, and that Parties could be proceeded against criminally.

5. But whilst Adultery should be considered a Crime, and punished criminally, I would also allow the Parties to sue for Damages in the Civil Court, if they wished it.

6. No other Parts of the Code seem to call for any Observations. On the whole, the Code appears to embrace almost every Act which it seems desirable for the public Good should be criminally punished; and though, possibly, when it is brought into Practice, it may in some Parts be found inapplicable to the State of Society, I think upon the whole it is as perfect a Code of Penal Laws as it is possible to frame, considering the various Classes and Descriptions of Natives it is to affect.

7. I beg leave to hand up an original Report, dated the 14th of August, from the late Acting Joint Magistrate of Sholapore.

I have, &c.

(Signed) R. MILLS, Collector.

P. STEWART Esq. to R. MILLS Esq.

(No. 220.)

Sir,

Joint Magistrate's Office, Sholapore, 14th August 1838.

IN reply to your Letter (No. 1,508 of 1838) dated 4th of June 1838, forwarding Copy of the Penal Code prepared by the Indian Law Commissioners, and requesting me to make any Observations I might wish thereon,—

2. I have the Honour to state, that in my Opinion Adultery ought to be treated as a Criminal Offence, and made punishable by Fine, on the Part of the Man, at the Discretion of the Magistrate or Judge, according to the Circumstances in each Case, the Fine in no Case to exceed the Amount of Expense incurred by the Husband at his Marriage, and to be awarded to the Husband,—and to the Woman Imprisonment, at the Discretion of the Judge or Magistrate, such Imprisonment not to exceed the Number of Days awarded by the Regulations in commutation of the Fine imposed on her Paramour.

3. I should also propose that, in addition to this, an Action should lay for Damages in Civil Court, at the Option of the injured Party.

4. I would treat Adultery as a Criminal Offence for the Reasons stated in Note Q of the Penal Code, viz., that the Parties who usually apply to our Courts in Cases of Adultery are generally poor Men whose Wives have run away. For these Persons some such Provision is required as the first proposed by me, as they are altogether unable to prosecute by an Action at Civil Law, which is always expensive, not only as regards Money but Time, which may be considered as the Wealth of the Poor. How is a Labourer or Cultivator to hang about our Courts of Law, Day after Day, and, in addition, to pay Costs? That the poorer Classes in this Country do not possess much Delicacy of Feeling on such Subjects is no Reason why they should not be allowed to seek the Redress they do require, viz., the Restoration of their Wives as useful Members of their Households. I conceive Laws should be framed to suit the Condition of the great Body of the People, and in some respect their Feelings, and they should not be deprived of all Redress, which (if what I have stated is the Case) would be the Result of referring them to a Civil Action, because they do not possess our chivalrous Sentiments respecting Women.

5. I would also allow an Action at Law for Damages in our Civil Courts to those who might wish it, and thus give a Mode of Redress to the more wealthy Classes, which they might prefer.

6. It has been stated that the higher Classes take the Law into their own Hands, because *they will not sue* in our Courts. I much Fear that if the poor Man has no other Means of obtaining Redress he will adopt the same Means, because *he cannot sue* in our Courts. I have thus stated why I think the lower Classes should not be deprived of such Redress as they are willing to accept, and I hope proposed a Means to enable the higher Classes also to obtain the only Compensation in the Power of any Government to award, viz., by Damages for the Loss and Injury.

7. I have only One other Subject on which to offer any Remark. Every Person must be aware of the Frequency of Suicide or Attempts at Suicide, in consequence of ill Treatment or aggravating Language on the Part of the Husband toward his Wife. In many Instances it is impossible to doubt the Fact, that the Husband was aware of the Consequences likely to result from his ill Treatment; but, however serious may be the Result, the Law, as at present constituted, does not, as far as I am aware, punish the Husband, the Author of so much Misery. I would propose that the Commission of this Offence be made punishable by Law.

I have, &c.

(Signed) P. STEWART, Acting Joint Magistrate.

H. A. HARRISON Esq. to C. SIMS Esq.

(No. 143.)

Sir,

Circuit Cutcherry Camp at Egutpooree, 1st February 1839.

I HAVE the Honour to acknowledge Receipt of the Court's Circular of the 29th May last, No. 727, forwarding, for my Opinion, as well as that of the principal Natives of this District, Copy of the Penal Code.

2. In reply, I beg you will acquaint the Judges, that having devoted to the Study of this important Work such Time as I have been able to spare from the arduous Duties of my Situation, I am of opinion that it is a Body of Law easily understood, and eminently adapted for the People for whom it has been framed.

3. The Provisions of the Code seem precise, equitable, and just, and the numerous Illustrations appended to the Enactments add greatly to the Value of the Work, in which is found many Offences unnoticed in the Regulations at present in force.

4. A Copy of the Code in the Mahratta Language not having been transmitted to me, I have been unable to obtain the Opinion of the principal Natives of this Province. Had, however, such a Copy in the Language of the Country been forwarded, I am not acquainted with any Native to whose Opinion I should have attached any Value.

I have, &c.

(Signed) H. A. HARRISON, Magistrate.

D. BLANE Esq. to the REGISTER of the SUDDER ADAWLUT, Bombay.

Sir,

Kandeish Magistrate's Office, Dhoolea, 19th January 1839.

IN reply to your Letter of the 29th of May last, calling for my Opinion on the new Penal Code, I have the Honour to acquaint you, that, although from the Weight of Business I have been unable to dedicate to the Subject the Study which it requires, I have perused the Volume with much Attention, and am of opinion that the Classification of Offences is more luminous and comprehensive than that hitherto adopted, and the Graduation of Punishments more nicely regulated according to the intrinsic Depravity of Crime, and the Result which is likely to attend its Infliction.

2. The Notes I consider a valuable Commentary on the Lights which in modern Times have been thrown upon the Theory of Legislation.

3. As the English Language is capable of furnishing so appropriate and intelligible a Designation, I think the Introduction of the local Term "Dacoit" is not in accordance with the Simplicity of Diction elsewhere observed.

4. The Means of ascertaining the Opinion of the Natives has been limited by the Want of a Mahratta Translation. I had hoped that the Duffurdar in this Office, whose Sentiments I should consider of Value, would have been able to have furnished me with some Remarks elucidating the Views of his Countrymen on the Provisions more immediately affecting their Prejudices; but his ordinary Duties have prevented his affording the Subject sufficient Attention. I am informed, however, that several intelligent Natives, including the Native Judicial Commissioner at this Station, are employed in canvassing the Merits of the Code, and should I be able to obtain their Notes I shall have the Pleasure of forwarding them for the Information of the Sudder Adawlut.

I have, &c.

(Signed) D. BLANE, Magistrate.

E. B. MILLS Esq. to C. SIMS Esq.

(No. 227.)

Sir,

Dharwar Magistrate's Office, 13th November 1838.

I HAVE the Honour, in reply to your Letter under Date 29th May last, with Accompaniments, Copies of the new Penal Code, to state, for the Information of the Judge, that I have no particular Remarks to offer on the Work in question. I am of opinion that when brought in Operation and well understood that it cannot but prove a most important and desirable Improvement upon the present Code, which is not sufficiently comprehensive, and therefore but ill calculated to meet Crime in all its multiplied Forms.

2. To review the present Work critically would occupy more Time than I should be able to devote to it; whilst, on the other hand, I feel myself incompetent for the Undertaking. There can be no Doubt that the real Merits of such a Work, as a Penal Code for this Country, will not be developed until brought fully into operation, and when this is the Case I have every Reason to think it will be found adequate to check and punish Crime in every Shape.

3. With reference to the Second Paragraph of your Letter, I beg to observe that there are no Persons of the Description therein noticed who understand English sufficiently well for Consultation in this Zilla.

I have, &c.

(Signed) E. B. MILLS, Collector and Magistrate.

No. 92.

W. S. BOYD Esq. to the OFFICIATING SECRETARY to the GOVERNMENT of INDIA.

(Judicial Department.—No. 2987.)

Sir,

Bombay Castle, 15th November 1839.

WITH reference to the 2d Paragraph of your Letter dated the 12th of August last, No. 442, I am directed by the Honourable the Governor in Council to transmit to you, for Submission to the Honourable the President in Council, Copies of a Letter from the Acting Register of the Sudder Foujdaree Adawlut, dated the 23d ult., and of its enclosed Reports from the Magistrate of Rutnagherry and the Acting Joint Magistrate of Broach on the Subject of the new Penal Code.

I have, &c.

(Signed) W. S. BOYD,
Acting Secretary to Government.

Enclosure in No. 92.

G. GRANT Esq. to W. S. BOYD, Esq.

Sir,

Bombay Sudder Foujdaree Adawlut, 23d October 1839.

I AM directed by the Judges of the Sudder Foujdaree Adawlut to acknowledge your Letter of the 30th ultimo, No. 2,592, with Enclosure from the Government of India, of the 12th August last, referring to Mr. Secretary Willoughby's Communication of the 10th June last (No. 1,568), and requesting further Reports on the new Penal Code.

2. In reply, I am directed to forward the accompanying Report from the Acting Joint Magistrate of Broach, dated the 10th ultimo.

3. The Session Judge of Tannah has already given his Opinion on this Code, whilst Assistant at the detached Station of Rutnagherry, and therefore a further Opinion from him is unnecessary.

4. The only Officer whose Report on the Penal Code has not been received is the Magistrate of Rutnagherry*; and the Judges regret to have to observe, that, notwithstanding a peremptory Call made on him, he has failed to forward it.

I have, &c.

(Signed) G. GRANT,
Acting Register.

* Since the closing of this Letter the Report from the Magistrate at Rutnagherry has been received, and which I am desired to submit herewith.

(Signed) GREGOR GRANT,
Acting Register.

G. COLES Esq. to W. C. ANDREWS Esq.

(No. 135 — Judicial Department)

Sir,

Joint Magistrate's Office, Broach, 10th September 1839.

I HAVE the Honour to state, in answer to the Circular of the 29th of May 1838, from the Sudder Foujdaree Adawlut, which accompanied a Copy of the new Penal Code, that the Regulations therein contained appear to me well adapted for the mixed State of Society existing throughout India. I have consulted the principal Natives of this Town, who express the same Sentiments, and state that they are much pleased with the Consideration which has been shown in protecting them from Interruption and Insult in the Performance of their religious Duties. I do not see that any Provision is made as a Criminal Act for the Punishment of those who appropriate to themselves Treasure-trove, stray Cattle, Property found at Sea, or recovered from a Shipwreck, which all are aware belongs to Government, and the Existence of which it is improper to conceal, both on account of the Finder being aware that the Property is not his own, and because it takes away the Chance which the proper Owner, from the Publicity of the Discovery, has afforded to him of recovering his Property. It also appears objectionable to me that the Minimum of Punishment is not left invariably to the Discretion of the Authority trying the Case; for, although the Punishment to be awarded by this Code appears generally to be very lenient, still there must frequently occur Causes of Mitigation, even for those Crimes which are reprobated by all, and likely to be most injurious to Society, but which cannot be foreseen or provided for. I would, for example, bring to Notice Clause 451 of Chapter XX. The Will might be of the smallest Amount; the Offender might be young, and induced to the Act by a third Party, or have the greatest Temptation placed in his Way, injuring only those who have also been defrauding him in other Instances, &c.; still no lighter Punishment than Two Years Imprisonment could be awarded. The heavy Duties I have had to perform, both from the Unfavourableness of the last Season and Cases of Importance having come before me, being left also with only One and sometimes no Assistant at all, have prevented me giving that Attention and Time to the Study of the Work I am now reporting on which I should wish to have given, and has caused the Delay in forwarding my Reply.

I have, &c.

(Signed) G. COLES,
Acting Joint Magistrate.

ALEX. ELPHINSTON Esq. to GREGOR GRANT Esq.

(No. 881)

Sir,

Rutnagherry Magistrate's Office, 12th October 1839.

IN obedience to the Direction of the Judges of the Sudder Foujdaree Adawlut, I have the Honour herewith to submit such Remarks on the new Penal Code as have occurred to me, and regret that they are not more worthy of the Subject.

2d. I would only further offer, as a general Remark, that the Penalties prescribed for Crimes in the present judicious and comprehensive Code of new Laws seem to me to be too mild to be effectual everywhere and at all Times in repressing Crime and preserving Tranquillity, and that therefore I consider it would be desirable to arm the Executive Officers

Officers with greater Extent of Authority, to be applied at their Discretion, according to the Time and Exigencies of a Country where particular Crimes may more or less prevail, as the same Degree of Punishment which may be sufficient in a Country which is peaceable and orderly may not be sufficient to restrain a turbulent Population.

3d. From Want of a Translation of the Code I have not been able to avail myself to any great Extent of the Opinions of the Natives concerning the Code.

4th. In conclusion, I beg to apologize for the Delay which has occurred in submitting the accompanying Remarks.

I have, &c.
(Signed) ALEX. ELPHINSTON, Magistrate.

CHAPTER III.

General Exceptions.—On the Right of Private Defence.

Under this Clause the Length of Time to which the Right of private Defence extends (Clause 81. is restricted "till the Offender has effected his Retreat with the Property, or the Property has been recovered." I would propose that the Right and legal Privilege conferred by this Clause on private Defence should be extended in Point of Time till the Offender is apprehended, as this would protect any of the Community from legal Consequences, if, in Self-defence, while in the Act of taking Prisoner, they hurt an Offender who was dangerous to seize, and who remained at large. It is well known that there are many Criminals who have deserted their Homes, whose Haunts are unknown to the Police, whom private Individuals might accidentally meet in the Jungle, when it would be desirable for the Country if Individuals who might not have a Warrant in their Pocket were exempted from the Consequences that might follow if their Attempt to seize the Offender was resisted.

CHAPTER VII.

Of Offences against the Public Tranquillity.

The Limit of Punishment for this Offence seems to me to be too confined. I would propose that Twelve Months should be substituted for the Words "Six Months" in this Clause. 129.

I am humbly of opinion that the Limit of Punishment for this Clause should be extended at least to Three Years Imprisonment, instead of being Two Years. 130.

I conceive it would be desirable to substitute Three Years Extent of Imprisonment for the Two Years specified in this Clause, but to make armed Rioters who remain on the Spot after they are commanded to disperse subject to Five Years Imprisonment. 132.

I am decidedly of opinion that the Limit of Punishment for this Clause is too confined. As it may not be possible to exact any Fine from Culprits under this Clause, I consider it would be desirable that the Limit of Imprisonment should be Two Years, instead of One Month. 135.

It appears to me that it would be desirable if the Words Two Years were substituted for the Words "One Year" in this Clause. 136.

CHAPTER VIII.

Of the Abuse of the Powers of Public Servants.

I would not have the Words "other than Refreshments according to the common Usages of Hospitality" included in this Clause, because it is sanctioning an Admission which is open to Abuse. It will lead poor Natives to lay out small Sums in giving Presents of Fruit to obtain Favour, and it is quite unnecessary that they should be subjected to this Expense. 141.

CHAPTER IX.

Of Contempts of the lawful Authority of Public Servants.

It appears to me that this Clause does not arm the Executive with sufficient Authority to repress Resistance; and it may not always be possible to prove the Circumstances which would render the Resister liable to the cumulative Punishment for "Offences affecting the Human Body." I am therefore of opinion that it would be advisable to extend the Limit of Imprisonment in this Clause to Twelve Months instead of Six. 171.

The Punishment for this Offence seems too slight, especially if the Resquer carries any Weapon. The Extent of Punishment should not, in my Opinion, be less than Two Years. 173.

One Month's Imprisonment seems too slight a Punishment for harbouring a Criminal. Harbourers enable Offenders to defy the Law, and dreaded Criminals are thus enabled to roam at large, from the Shelter they receive. I would propose to substitute Three Years as the Extent of Punishment for this Crime. 177.

I would recommend the Substitution of Three Years Punishment for the "Two Months" authorized by this Clause. 178.

Clause 182.

Disobedience of lawful Authority, attended with any such serious Consequences as specified in this Clause, seems too lightly punished, if that may not extend beyond One Month's Imprisonment. I would recommend the Power of this Law to be increased, and made One Year.

CHAPTER X.

Of Offences against Public Justice.

190. I think that Courts should be vested with the discretionary Power of also sentencing to public Disgrace for the Offence mentioned in this Clause, for the Example of such a Spectacle would have more Effect than mere Prison Discipline in deterring the unprincipled among the Community, and thus it would operate in checking the frequent Recurrence of a dangerous Crime. Property would be better protected by Law that sanctioned such a Punishment, and the disgraceful Nature of the Crime warrants a Punishment that consists in Disgrace.
191. To each of these Clauses I would recommend the Addition of the Authorization of
192. public Disgrace.
195. It appears to me that the Crime mentioned in this Clause is as great as that specified in Clause 162, and therefore, in my Opinion, the Power of Punishment in both Cases should be equal, viz., to the Extent of Three Years.
201. The Punishment under this Clause does not seem sufficient to deter and repress Convicts under long Sentences from attempting Escape, to discourage which Courts should be empowered to adjudge Sentences to the Extent of Three Years Imprisonment.
206. The Imprisonment under this Clause being only "simple," Six Months of such Imprisonment does not appear sufficient Punishment for the Headman, or Police Officer, of a Village, who may secrete a Convict in his Village perhaps for Years. The Punishment, therefore, under this Clause, ought to be extended; or a Clause ought to follow it, authorizing cumulative Punishment for any other Infringement of the Laws which may accompany this Offence, by making the Offender against Clause 206 in some Cases also liable to the Penalties of Clause 157.

CHAPTER XII.

Of Offences relating to Coin.

236. I would propose to extend the Punishment under this Clause to Seven Years Imprisonment, and constitute the *Maker* of the Implement liable to the same Penalty as the Possessor of it.
246. Persons who scoop out Coins will probably do this Work on a large Scale, or continue the Practice for Years; the Extent of Punishment should not therefore be less than Seven Years Imprisonment. Repetitions of any of the Offences specified in this Chapter, after a previous legal Conviction, should in my Opinion subject the Offender to double the Extent of Punishment he would be liable to receive for the First Offence, or at least subject the Offender to an enhanced Degree of Punishment beyond that assigned to a First Conviction.
247. The Punishment for Infraction of this Clause I would suggest should be the same as that recommended for Clause 246. From the Thinness of the Company's Coin much greater Difficulty must be experienced in scooping it out than in performing the same Operation on other Currencies in a Manner so as not to meet Detection, and to reward the Workman for his Pains. Equal Punishment would therefore still be a protective Enactment in favour of the Company's Coin.
248. I would suggest that the Makers as well as the Possessor of any Instrument intended for Injury to Coin should be equally punishable, and that both should be liable to Seven Years Imprisonment.
249. I would recommend that those who knowingly receive and utter injured or debased Coin should be liable to Seven Years Imprisonment. The Makers of base Coin in the largest Quantity will mostly reside in Foreign Territory, on account of the greater Laxity of Police in Foreign Jurisdiction; the Law should therefore effectually punish those it can grasp, viz., Persons who cause its Importation or Circulation in the Honourable Company's Territory.
250. I would suggest the Expediency of increasing the Extent of Punishment for a Violation of this Clause to Seven Years Imprisonment, for the Reasons assigned for increasing the Extent of Punishment in Clause 249.
251. I would recommend the Increase of the Extent of Punishment specified in these
252. Clauses to Seven Years Imprisonment, for the Reasons assigned by me in my Remarks on Clause 249.

CHAPTER XIII.

Of Offences relating to Weights and Measures.

This Chapter should in my humble Opinion include a Clause for the Punishment of such Persons who, though they use a just Balance and Measures, yet defraud in the Weight they give by the Manner in which they hold the Scales. This is done either by letting down the middle Finger or Thumb to press the stiff Cord by which the Scales are suspended.

suspended. The re-weighing of the Quantity weighed out would always afford the Means of detecting the Fraud, by which poor People are often imposed upon.

CHAPTER XIV.

Of Offences affecting the Public Health, Safety, and Convenience.

It appears to me that Words should be introduced into this Clause to the following effect, viz., "whoever, *disguising from the Purchaser*, sells or offers for Sale," &c. ; as the Fishermen of this Zillah bring on shore, and to the Bazar, putrid Fish, which the Necessities of some People compel them to buy, because it is cheap, and if they could not obtain which they might use worse Food. Clause 260.

In this Clause, after the Words "he believes to be sufficient," I would recommend the Insertion of the Words *or which is obviously insufficient* to guard against any probable Danger to Human Life, because an Offender may not admit that he believed he had omitted to take sufficient Order, and by this Denial may escape the Punishment he deserved, while his Omission might be of a glaring and culpable Nature, and such as ought to be visited with Punishment by a Court of Justice. 273.

CHAPTER XVIII.

Of Offences affecting the Human Body.

I would recommend that Offenders under this Clause be liable to Seven Years Imprisonment. 346.

I would suggest, that immediately after the Words in this Clause "wearing or carrying," should be inserted the Words *or assaults with the Intention of robbing him of Property supposed to be in his Possession*. I would also beg to suggest the Propriety of increasing the Penalty of Imprisonment to the Extent of Five Years, because many of those who offend under this Clause will be ready to use Force should they accidentally meet with any one who has Courage to resist them. Prepared as most Offenders would be to use Force in committing Offences of this Nature, they are to be viewed as morally guilty of more than they commit, and the Courts should be vested with a greater Latitude of discretionary Power, to apply as the Case may require. 347.

CHAPTER XIX.

Of Offences against Property.

It appears to me that it would be desirable after the Words in this Clause "takes into" to insert the Words *or keeps in*, because that would render penal the keeping of stray Cattle which ought to be given up to the local Authorities, in order that Search by Proclamation may be made for the Owner. 383.

Either this Clause should, after the Word "knowing" contain the Words *or having good Reason to suppose*, or else there ought to be a separate Enactment for the Punishment of those Persons who receive suspicious Goods without sufficient Inquiry, and without giving previous Notice to the public Authorities before they take in such suspicious Goods. 390.

The same Remark seems to me applicable to this Clause as to Clause 390. 391.

The Amount of Penalty for the Offence specified in this Clause seems too small, and I would propose it should be extended to Two Years Imprisonment. 402.

I would propose that the Penalty for the Offence specified in this Clause should be extended to at least Seven Years Imprisonment, because the Offenders may be so poor that Courts would not fine them, and in that Case they could only be punished by Imprisonment. 403.

The killing of Dogs by the Police found abroad after Proclamation should be made an Exception to the Penalties prescribed by this Clause. 406.

I would suggest that the Extent of Imprisonment specified in this Clause should be increased to Seven Years Imprisonment. 416.

CHAPTER XXVI.

Of Criminal Intimidation, Insult, and Annoyance.

The Punishment under this Clause I am of opinion should be extended to at least Three Years Imprisonment. 482.

I think this Clause should include Punishment to Persons writing or sending obscene or improper Letters to any Person, with Intention malignantly to annoy. 487.

(Signed) A. ELPHINSTON, Magistrate

No. 93.

F. J. HALLIDAY Esq. to R. D. MANGLES Esq.

(Judicial Department.—No. 1,116.)

Sir,

Fort William, 5th June 1838.

I AM directed by the Honourable the Deputy Governor of Bengal to request that you will lay before the Government of India the accompanying Copy of a
(263) X x 2 Letter

(34)

Letter from the Register of the Sudder Nizamut Adawlut, dated the 11th ult. (No. 1,347), and of its Enclosures, regarding Punishment awardable to Prisoners who take Means to incapacitate themselves for Labour, in order that the Point may be referred to the Law Commissioners for Consideration.

I have, &c.
(Signed) F. J. HALLIDAY,
Secretary to the Government of Bengal.

Enclosure in No. 93.

J. HAWKINS Esq. to F. J. HALLIDAY Esq.

(No. 1347.)

Nizt. Adawlut.
Present.
R. H. Rattray,
W. Braddon,
N. J. Halhed,
Esquires, Judges;
W. Money,
J. R. Hutchinson,
Esquires.
* Judge of Patna,
No. 23, 13 Feb.
last.
Letter to W. Court,
No. 938, 30th March
last.
Western Courts
Reply, No. 466,
20th ultimo.

Sir,

Fort William, 11th May 1838.

I AM directed by the Court to request that you will lay before the Honourable the Deputy Governor the accompanying Copy of a Correspondence* occasioned by a Reference from the Session Judge of Patna as to the Punishment awardable to Prisoners who take Means to incapacitate themselves for Labour.

2. The Court have instructed the Session Judge of Patna, in the Terms of the Opinion on the Subject expressed by the Court of Nizamut Adawlut for the Western Provinces; but they are of opinion that the Correspondence should be laid before the Law Commission, and have directed me to forward it for that Purpose.

I have, &c.
(Signed) J. HAWKINS, Registrar.

J. W. TEMPLER Esq. to J. F. HAWKINS Esq.

Sir,

Sessions Court, City Patna, 13th February 1838.

I HAVE the Honour to forward Copies of a Correspondence with the Magistrate of this District, regarding certain Prisoners who have been applying poisonous Drugs to Sores for the Purpose of avoiding Labour.

No Provision seems to have been made in the Regulation for this Crime. The Prisoners are unable to bear the Infliction of Stripes; and it is in my Opinion necessary, to prevent a constant Recurrence of this Offence, that some Punishment should be awarded. The most simple Remedy would be to increase the Period of Imprisonment with Labour not exceeding Six Months; but, under existing Rules, I doubt the Competency of the Magistrate or Session Judge to pass such Sentence. I am therefore induced to bring the Case to the Notice of the Superior Court, with a Request that they will be pleased to favour me with their Instructions on the Subject.

I have, &c.
(Signed) J. W. TEMPLER, Session Judge.

F. SKIPWITH Esq. to J. W. TEMPLER Esq.

(No. 41.)

Sir,

City Patna Magistracy, 25th January 1838.

I HAVE the Honour to enclose you a Copy of a Letter to my Address from the Civil Surgeon of Patna, and to request that you will lay the Subject before the higher Authorities, with a view to its future Prevention and Punishment, which in my Opinion would be best attained by rendering each Offence punishable by further Imprisonment for a Period not exceeding Six Months.

2. The Health of the Prisoners renders it impossible to punish them under any of the existing Rules for Prison Discipline, such as by Stripes, Handcuffs, or Diminution of Food. The Number of Cases of ulcerated Legs in Hospital occasioned by the Application of Poison requires that immediate Measures be taken for the Suppression of the Evil, for, till done, the Object of Imprisonment and Labour is nullified.

3. Every Prisoner is supplied with a Pair of Leather Mozehs, in compliance with the Circular Orders of the Nizamut dated 9th March 1832, and I have therefore issued strict Orders to the Guards to compel the Prisoners to wear them when labouring on the Roads, and shall, till some suitable Punishment be devised, hold them responsible for any Cases of Ulceration that may hereafter ensue.

I have, &c.
(Signed) F. SKIPWITH, Magistrate.

SAMUEL DAVIES Esq. to F. SKIPWITH Esq.

(No. 14.)

Sir,

Patna Civil Surgeon's Office, 22d January 1838.

I HAVE the Honour to report to you, that on Four of the Prisoners in Hospital on account of Ulcers, whose Names are in the Margin, were this Day detected Materials of a
Mineral

Mohadew,
Kamoo Roy,
Peeroo, and
Girdharee.

Mineral Nature, used by them for producing and enlarging Sores. Mohadew has been in Hospital for Two Years, and has been long known to have extended his Sore, when it was nearly well, and there was a Prospect of his being dismissed from the Hospital. The other Three Men have produced and maintained the Sores they are now labouring under on purpose to evade Labour.

I send the Materials, which are Arsenic, White and Yellow Verdigris, Blue Vitriol, and other corrosive Substances, and trust that you will be able to devise some Punishment for these Wretches which will have the Effect of deterring others from the like Practices.

I have, &c.
(Signed) SAMUEL DAVIES, Civil Surgeon.

(No. 16.) J. W. TEMPLER Esq. to F. SKIPWITH Esq.

Sir,

Sessions Court, City Patna, 31st January 1838.

WITH reference to your Letter of the 25th instant, I have to request that you investigate the Charges brought against the Prisoners Mohadew, Kamoo Roy, Peeroo, and Girdharee.

Of those convicted of applying Poison to their Sores you will ascertain from the Surgeon how many are capable of bearing without Injury the Infliction of the Rattan. You will then furnish me with an English Report on the Subject, mentioning, in addition, the Period of Labour for which they were originally sentenced, with their Crimes.

It is of course to be understood that until further Orders you do not inflict the Punishment of Stripes on any of the Prisoners.

I have, &c.
(Signed) J. W. TEMPLER, Session Judge.

(No. 76.) F. SKIPWITH Esq. to J. W. TEMPLER Esq.

Sir,

Patna Magistracy, 8th February 1838.

I HAVE the Honour to acknowledge your Letter of the 31st ultimo, and to inform you that the Four Prisoners noted in the Margin are unable to bear Corporal Punishment. Mohadew, Kamoo Roy,

A Copy of the Letter from the Civil Surgeon is herewith forwarded, and subjoined is the Information relative to the Prisoners required by you. Peeroo, and Girdharee.

Name.	Crime.	Length of Imprisonment.	Term of Imprisonment unexpired.
Mohadeow -	Burglary and Theft	Three Years, with Labour and Irons.	One Year, One Month, Twenty-three Days.
Kamoo Roy -	Digging a subterraneous Passage with Intent to commit Burglary.	Two Years - -	One Year, Five Months, Seventeen Days.
Peeroo	Rape - -	Three Years	Two Years, One Month, Seven Days.
Girdharee	Died.		

I have, &c.
(Signed) F. SKIPWITH, Magistrate.

(No. 22.) SAMUEL DAVIES Esq. to F. SKIPWITH Esq.

Sir,

Patna Civil Surgeon's Office, 2d February 1838.

IN acknowledging the Receipt of your Letter, No. 55, of Yesterday's Date, respecting Four Prisoners noted in the Margin, I am of opinion that they are in too bad a State of Health to bear Corporal Punishment. Girdharee* is scarcely likely to recover from the constitutional Effects of the Poison applied to enlarge his Sore. Mohadew, Kamoo Roy, Peeroo, and Girdharee.

I have, &c.
(Signed) SAMUEL DAVIES, Civil Surgeon.

* Girdharee has since died.—F. Skipwith.

(No. 938.) J. HAWKINS Esq. to H. B. HARRINGTON Esq.

Sir,

Fort William, 30th March 1838.

I AM directed by the Court to request that you will submit, for the Consideration and Opinion of the Judges of the Western Court, the accompanying Copy of a Letter, No. 23, (263.) dated

Nizt. Adawlut.
Present.
H. Rattray,
V. Braddon,
J. J. Halled,
Esquires, Judges;
V. Money,
R. Hutchinson,
Esquires, Tem-
porary Judges.

dated the 13th ultimo (and of its Enclosures), from the Session Judge of Patna, on the Subject of the Competency of the Criminal Authorities to punish Convicts wilfully injuring themselves for the Purpose of avoiding Labour.

2. The Court are of opinion that the Act of wilful Self-injury for the Purpose mentioned is punishable as a Misdemeanor under the general discretionary Power vested in the Magistrate by Section 19., Regulation IX., 1807; and in the event of the Concurrence of the Judges of the Western Court they will reply to Mr. Templer accordingly.

3. It is in the Recollection of some of the Members of the Court that a similar Reference was made from One of the Districts in the Western Provinces some Years ago, but the Papers are not traceable in this Office, and were probably forwarded to the Western Court on the Distribution of the Records. In the event of their Discovery, a Precedent may be found in Determination of the Points at issue.

I have, &c.

(Signed) J. HAWKINS, Registrar.

H. B. HARINGTON Esq. to J. HAWKINS Esq.

(No. 466.)

Sir,

Allahabad, 20th April 1838.

Nizt. Adawlut,
N. W. Provinces.
Present.

M. M. Turnbull,
A. J. Colvin,
W. Lambert,
V. Monckton, and
B. Taylor, Esquires,
Judges.

I AM directed by the Court to acknowledge the Receipt of your Letter, No. 938, under Date the 30th ultimo, with its Enclosures, from the Sessions Judge of Patna, on the Subject of the Competency of the Criminal Authorities to punish Convicts who may wilfully injure themselves for the Purpose of avoiding Labour.

2. In reply, I am directed to inform you that on the Receipt of your Letter the Court ordered a careful Search to be made amongst the Records received from the Calcutta Court for the Papers connected with the Reference adverted to in the concluding Paragraph, but they regret to state that their Record Keeper has not succeeded in tracing them.

3. With regard to the general Question submitted by the Sessions Judge of Patna, I am directed to observe, that the Offence charged against the Prisoners referred to by that Officer does not appear to the Court to be a Misdemeanor coming within the Provision of Section 19., Regulation IX., of 1807, but rather to constitute a Breach of Prison Discipline, and to be punishable as such by the Magistrate under the general Rules laid down for the better Management of public Gaols.

I have, &c.

(Signed) W. H. HARINGTON, Registrar

No. 94.

JAMES REILY Esq. to A. AMOS Esq.

Dewanny Adawlut, Zillah Dacca,
8th November 1838.

Dear Sir,

I HAVE the Pleasure to send to your Address a Letter containing my Thoughts on One of the Features of the Company's Regulations, and I do it with much Diffidence, knowing to whom I am writing. I should scarcely have ventured upon it had you not so kindly encouraged me to write; and I shall hope, therefore, that if the Ideas prove of any Service you will generously overlook the Imperfections of the Manner in which they have been conveyed. My next Letter will depend upon any further Encouragement you may be pleased to give me.

I will just mention, that there are some Ideas* in the Letter which may be reckoned as some of the strongest Grounds for objecting to the present Union of the Revenue and Magisterial Offices.

I remain, &c.

(Signed) JAMES REILY.

* Regarding Persons assembling in riotous Mobs, with the Intention to fish.

That a Zemindar having the Power to summon a Ryot for a legal Purpose shall not detain him after Sunset, unless the Requisition be made under a Magistrate's Order, and for public Purposes. Any Detention after this Time shall otherwise be deemed a Duress, and subject the Zemindar to a *Fine*, and his Agents to Imprisonment.

That a Zemindar or his Agents seizing a Ryot at any Haut or Fair or Market shall be liable to Punishment.

That any Act of a Ryot in executing a Deed of any kind whatever, after he has been seized and brought to a Zemindar's Kutcherree for any Purpose, shall be void.

No. 95.

JAMES REILY Esq. to A. AMOS Esq.

Dewanny Adawlut, Zillah Dacca,
8th November 1838.

Sir,

I now take the Liberty of addressing you, and of submitting the Result of my Observations on the practical Effects of some of the Laws of the Country, and the Points in which they appear to me susceptible of Improvement.

2. I do not feel competent to enter into a general or comprehensive Discussion of the Subject, and it would be Presumption in me to attempt it while addressing one who has been specially chosen or pre-eminently qualified for the Office you now hold. I can give you my Ideas on mere isolated Points, and I do this with less Reluctance as my Experience of Seventeen Years in applying the existing Laws to the Cases that came before me as Sudder Ameen and Principal Sudder Ameen of the Districts of Mymensingh, Rungpoor, and Dacca has enabled me to note how far they have practically answered the Ends of the Legislature in protecting the Rights or ameliorating the Condition of the People.

3. My Attention has been more particularly devoted to the Manner in which the Laws affect the Interests of the Peasantry. They form the far greater Body of the People, and their Interests are synonymous with the Interests of Agriculture and the internal Commerce of the Country. Every Day's Experience brought me into contact with some Questions which affected their Welfare, and almost every Case proved to me that their Interests lay too much exposed to the Cupidity of the Zemindar and his Agents, and were not sufficiently guarded to enable the Courts to afford effectual Address.

The principal Sources of this Exposure arise :—

1st. From their landed Tenures not being sufficiently protected.

2dly. From Hardships and Oppressions created by the Laws themselves.

3dly. From the Absence of those Checks which are necessary to guard them from the Abuse of Power.

4. The first of these Points belongs exclusively to the Civil Code, and may be discussed therefore at some future Period, when I propose to address you again. The other Points belong also to the same Code, but they require more immediate Attention, inasmuch as they are more personal, and consequently of a more serious Nature, and, unless rendered specifically actionable before the Magistrate, any other Provision for removing them will but leave the Evils as they stand.

5. *Of the Hardships and Oppressions created by the Laws themselves* I will call your Attention first to a Provision in Regulation VII. of 1799, Section 85, Clause VIII., which states that “no Part of the existing Regulations was meant to deprive the Zemindars and other Landholders of the Power of summoning and if necessary *compelling* the Attendance of their Tenants, for the Adjustment of their Rents, or for any other just Purpose, or of measuring any Land within their respective Estates which may be liable to Measurement under the Conditions upon which such Land may have been leased or held.” A Third, if not more, of the Applications daily presented to a Magistrate for Redress consist of Complaints preferred by Ryots against the Abuse of this Power; yet they do not constitute a Fiftieth Part of the Instances in which the Power is exercised and felt. They who know how peculiarly a Ryot is situated towards his Zemindar will understand how utterly hopeless must have been the Cases of those who ventured to make the Complaint and incur the Costs, the Delay, and the Vexations attending a Suit against their Zemindars.

6. The Causes which lead to the Ryot being forcibly summoned are many. In all large Zemindarees the Landholder himself never collects his Rents; his Nayab or Steward represents him in every possible Connexion with his Tenantry. This Nayab seldom receives a Salary of more than Eight or Ten Rupees, and even this is often but nominal. In very few Cases indeed, and then only when the Estate is nearly large enough to represent a Principality, does the Nayab receive Thirty or Forty Rupees. His chief Dependence is on the Means he can illicitly draw from the Ryots, which, exclusively of annual Presents of One or Two Rupees from each Putwarree and Mundul on the Estate, and a proportionate Douceur for every Lease he grants, consists in a more enlarged and permanent Source of Emolument in a fixed annual Income from every Village of a Fourth or Sixth or Eighth of its Rental, which is termed a Chanda or Con-

tribution, and which is rateably apportioned upon each Ryot according to the Rent he pays on the Land he occupies. The Nayab of the late Hurree Mohun Tagore collected from the Property of that Gentleman, Purgunnah Surooppoor, situated in the District of Rungpoor, an annual Sum of not less than Five thousand Rupees for his exclusive Use, which was certainly not less than a Tenth of the actual Profits of the Estate. I had very favourable Opportunities of ascertaining this from having held my Kutcherry, when Moonsiff, in Rungpoor, on the Borders if not actually within the Estate itself. Now the Nayab may recover his Master's legal Rents by a summary Action or by Distress, but for his own illicit Claims he has no other Means, and wishes for no other Means, than that given him by the Provision here reprobated.

7. Zemindars generally charge an Anna or Seventy-five per Cent. Interest on every Rupee of the Rent which has not been paid. This Interest can not be recovered by either of the legal Modes, and he readily resorts, therefore, to the Rule in question for that Purpose.

A Robbery or a Murder takes place, which produces a Visit from the Darogah. To save the Attendance of the more affluent Inhabitants of the Village, the Darogah and his Minions are bribed, and this Money, though paid without the Consent of the poorer Classes, and brings *them* no Exemption, is equally charged to all; but as no legal Process would enable them to enforce its Payment, they gladly take advantage of the Rule under Reprobation.

8. A Ryot's Lands are coveted by an affluent Neighbour. The latter bribes the Nayab to get it for him; but the Tenant continues to pay his Rents punctually. How is this to be done? The Ryot is summoned first on the Plea that he has more Lands than stated in his Lease, and a Measurement is ordered and made. He is summoned again for an Adjustment of his Accounts, when a Surplus of Rent is made out against him, and the Arrears of preceding Years calculated and shown him. He is summoned a Third Time to pay these Arrears, and if he refuses he is detained till he either pays or signs a Document acknowledging the Debt. The Ryot feels that the Claim is unjust, and consequently delays or evades Payment; but he is harassed by Peons, who seize him, whether going to Market or while at a Market, whether travelling to see a Relative or Friend, or engaged in calling a Physician for a sick Parent or Child, and they carry him away to the Kutcherry, where he is compelled to pay the unjust Demand, or to relinquish the Lands.

9. Let him complain for any One of these Annoyances, and he will find that there is no Redress for them. The Law permits the Zemindar to compel his Attendance for "*the Adjustment of his Rents,*" and which of these Circumstances may he not cloak under the Excuse here furnished him? It may be said that the Ryot is protected from Confinement; but the Hardship of being subject to the Beck of any Peon in the Zemindar's Employ,—of being forcibly carried away, often to the Distance of Miles,—of being liable to be disturbed at any Hour of the Day, and on any Day, however urgent his own Business,—is scarcely a less Evil. The Power was designated monstrous by Mr. Macaulay when I had the Honour of mentioning it to him, and I could hardly persuade him that it existed in the Company's Regulations; nor will it be deemed otherwise but by those whose Minds have received the Taint and Prejudices of Indian Feelings. Take the Circumstance of a Ryot's high Rent, his other Taxes, the exorbitant Rate of Interest he often pays for his Capital, and then add the Tyranny which the Provision in question exercises over him, and we shall not be far from the Truth if we say that he not only labours for the Zemindar as his Landlord, or the Mahajun as his Creditor, but that his Condition scarcely differs from the Saxon Serf or the West Indian Slave.

10. Another Source of Gain to the Zemindar is the Fines which he levies from his own Tenants for a Number of Crimes which in the First Resort generally come before him, and which in the Hands of his Agents prove a Source of great Oppression to the poor Ryot. There are few Cases short of Ducoity and Murder that come before the Magistrate which will not appear to have been *previously* investigated by the Zemindar's Agents, or to have been partially disposed of by them. These Offences consist chiefly of Cases of Adultery, of Seduction, of procuring Abortions, of Pregnancy in Widows of previously good Reputation, of petty Theft, of Night Trespass, of Loss of Caste, of petty Assaults and Offences; and as the Zemindar's Interference in such Cases is illegal, the Means of Seizure and compulsory Attendance put
into

into their Hands by the Regulation in question afford them a convenient Means of exercising a judicial Power over their Ryots.

11. The System might, indeed have been tolerated, and Zemindars substituted for Local Magistrates, subject to the Supervision and appellate Jurisdiction of the Superior or District Magistrate ; but the Power as it exists is perverted to Purposes of Gain, and not to Usefulness ; and what would it be were it legalized ? A Charge of Adultery against a Woman is often founded on the Circumstance of a Man having been seen to enter or egress from the House of a Female whose Husband may have been either present or absent, and the Charge is alleged, not by the Husband, but by the Chowkeydar, and originated perhaps in a Conspiracy to convict the Man who visited the House, for the Purpose of extorting Money from him. Pregnancy of Widows, in Cases of Hindoo Females especially, notwithstanding that no Complaint is made by any Member of the Family, is invariably made the Subject of an Action in the Zemindar's Court, for Purposes of Extortion. It is the same with Cases of alleged Abortion, when a Case of accidental Miscarriage is often construed into the Crime. A Night Visit from a Hindoo to a Mussulman Female will often cost him Exclusion from the Sumaj or General Assembly at a Feast of Persons of the same Caste, which eventually leads to an Action in the Civil Court, less with the View to recover Damages than to clear his Character. The harbouring of a Wife who was detected in Adultery will cost the Husband, whether Hindoo or Mussulman, the Loss of his Caste, unless he propitiates the Heads of the Assembly, the preliminary Step to which is to propitiate the Zemindar by paying him liberally, with the View to secure his Influence.

12. Take away, therefore, the Power which affords the Zemindar the Means of seizing and summoning his Tenantry, and you destroy all his Means of perplexing and harassing the poorer Classes. Why have the Commissioners refused to take cognizance of the Offences in the Penal Code, and yet leave the People a Prey to all the Vexation and Sufferings arising from them ?

13. But, in addition to these Evils, the Ryot is generally *confined*. I have scarcely met with an Instance in which the Power of compelling the Ryot's Attendance has been exercised which was not attended by this aggravating Circumstance. The Restriction against Confinement in Regulation XVII. of 1793 does not prevent it, because of the Existence of the Power which permits the Zemindar to seize the Ryot, and forcibly drag him away to his Kutcherry ; and for this Reason, that the Ryot could easily prove the Seizure and carrying away of his Person, as his Friends and Neighbours saw these Circumstances transpire ; but who saw him confined at the Zemindar's Kutcherry ? In many Instances the Manner and Mode in which the Ryot is confined preclude all Evidence of the Fact, as none but the Zemindar's Creatures have Access to such Portions of his House or Kutcherry which is appropriated to this Purpose ; and a Person following from the same Village would be suspected as coming with the View ultimately to give Evidence, and he would not be permitted to accompany them. If he went, his own Fate would be the same with that of the Prisoner carried away. Sometimes a Relative will follow, perhaps a Mother or a Brother, but his or her Evidence is always taken with Doubt. If he can vouch for no more than the Seizure, the Act is considered legal, and the Magistrate believes himself precluded from Interference. It is obvious that had there been no Rule which permitted the Seizure of the Ryot, Evidence to this Effect would be sufficient to establish a Presumption at least of the Confinement, and the Magistrate would have had no Scruples for interfering in the Case. There have been Instances when the Confinement has been fully proved, and the Magistrate has still refused to interfere, on the Ground that his Interference might impede the Collections of the Public Revenue. This happens oftenest when the Anxiety of the Collector for the Public Revenue takes place of the Feelings of Justice which would otherwise have actuated the Magistrate. So utterly ruinous to the Welfare of the Ryot has this Rule proved, that unless an Application broadly asserts that the Ryot is *actually missing*, or has been *some Days in Confinement*, the Magistrate will treat it with the most contemptuous Indifference ; and when he does interfere it is simply to order the Darogah to release him. Few will trace the Act up to Conviction for what he considers a legitimate Means of collecting the Revenues.

14. How can he, indeed, do otherwise, when he, as Collector, may seize and legally detain a Ryot of Khass or Government Estate for Ten Days, who is alleged

alleged by himself or his local Tehseeldar to be a Defaulter. *His own Conduct would condemn him.* It is not an Assumption, but a Fact evidenced by every Day's Experience, that a Magistrate, when holding his Office distinct from that of a Collector, has more readily attended to Complaints of this Nature than One whose own Acts compel him to justify a Zemindar.

The Power is often employed *to collect the actual Rents* of an Estate, though the Rule in Regulation VII. of 1799, which prescribes that an Application to arrest a Defaulter shall be made to the Judge of the District, would appear to put it without the Pale of such a Construction. The Phrase, for "a just Purpose," would, notwithstanding, justify the Act; and if I mistake not, the general Impression in the Civil Service is, that the Rule was intended to confer upon the Zemindars the Power of collecting the Rents. I have been told this by several of them; and some of my Convictions and Sentences, as Assistant to the Magistrate, grounded on my Views of the Rule, have been reversed. But is it not enough that the Landholder has his Remedy by summary Suit and Distress? A summary Suit gives him the Right of having the *Person of the Tenant arrested, without Oath, without Proof, and without a previous Demand*; a Distress is a *Remedy without Suit*; the Landholder takes the Tenant's Property into his own Possession, without reference to a third Person, and cannot be compelled to give it up without ample Security, or immediate Satisfaction of his Claim! With Powers so plenary, so complete as to leave an additional Measure scarcely to be desired, why hazard the Comforts, the Independence, and the Happiness of the most numerous and the most useful Portion of the People, by a wanton Surrender of their Persons to those most interested in abusing them?

15. The Power in question appears to have been assumed by the Zemindars under the previous Government, and hence, perhaps, the Reason why it subsequently obtained a Place in the Regulation; but the Existence of a Practice, in the Absence of definite and systematic Rules for summary Redress, can be no Argument for its Continuance, when a more wholesome and equally effectual System has been made available; nor was the Power deemed necessary for the Collection of the Rent by either Sir John Shore or Earl Cornwallis, as it was not passed into Law till 1799, when it formed Part of a Regulation which so much exposed the Interests of the Ryot as to call for Two other Regulations,—that of V. of 1812, and VIII. of 1819,—to protect them.

16. Should there be an Objection, however, to the complete Abrogation of the Rule, let the Government guard it at least from the more palpable Abuses to which it is liable; let them say that the Ryot shall not be taken *out of his Village*, nor summoned oftener than *once or twice in the Year*, at the Seasons of the Ouse and the Amun Harvest, or when authorized to do so by a Magistrate or a Collector, and for a public Purpose; let them say that the Tenant shall not be detained after Sunset, nor summoned on a Market Day, i. e., the Day on which the nearest Market to his House is held.

17. Having already trespassed to an unusual Length upon your Time, I beg to defer the Consideration of other Points to a future Opportunity; and in the meantime,

I have, &c.
(Signed) JAMES REILY,
Principal Sudder Ameen.

No. 96.

The Hon. Sir J. P. GRANT Knight to J. P. GRANT Esquire.

Sir,

Titaghur, 28th September 1839.

I HAVE to request that you will be pleased to deliver the enclosed Letter to the President in Council.

I have, &c.
(Signed) J. P. GRANT.

The Hon. Sir J. P. GRANT Knight to PRESIDENT and COUNCIL of INDIA.

Honourable Sirs,

Titaghur, 28th September 1839.

I HAVE had the Honour to receive your Letter of the 12th ultimo. I trust that you will not doubt my sincere Wish to comply on all Occasions in my Power, and to the best of my Ability, with every Desire intimated to me by the Council of India; but when I had the Honour to receive the Letter of the former Members of the Council, of 12th February 1838, to which you refer, though I felt honoured by the Communication, I confess I considered it as Matter chiefly of Courtesy, not conceiving that it was expected of me that I should give an Opinion upon a Code of Laws. I did not think, therefore, that it was necessary for me, in answer to that Letter, to state at Length the Circumstances which, as I thought, rendered such an Undertaking on my Part incompatible with my Duties as a Judge.

In the Letter, however, which I have now the Honour to acknowledge, you inform me that the Honourable the Court of Directors, in a Despatch recently received, having said that when the proposed Penal Code submitted by the Indian Law Commissioners shall for some Time have engaged the Attention of Persons conversant with the Subjects of which it treats, the Authorities in India and in England will feel themselves more competent than at present to form a satisfactory Judgment concerning its general Merits, and to determine what Sort of Scrutiny it ought to undergo before being brought into practical Operation; and the said Honourable Court having further remarked, that material Advantage may result from calling respectively upon the Judges of the several Supreme and Sudder Courts to report upon particular Parts of the Code, with reference to the Systems of Criminal Law which they have heretofore administered, you repeat the earnest Request contained in the Letter of your Predecessors to my Address, dated 12th February 1838, that the Indian Government in this Country and at Home may be assisted in the Review of the Work in question, which they must soon commence upon, by such Observations and Suggestions as may be dictated by my intimate Acquaintance with the important Subject to which that Work relates.

I am persuaded it is not intended to claim on the Part of the Court of Directors a Right to direct their Government *to call upon Her Majesty's Judges to report* upon a Code of Laws, or upon particular Parts of a Code, which is under the Consideration of those who are intrusted with certain Powers of Legislation in India. My Difficulty, therefore, in complying even to a partial Extent with the Request contained in your Letter, is not produced by any Consideration of this Sort.

The Question, how far an English Judge may, consistently with his Duty, deliver Opinions upon existing Laws to any Person but to his Sovereign and to the Parliament, when required by either of these pre-eminent Authorities so to do, is one, with reference to the Situation of One of Her Majesty's Judges in this Country, of great Difficulty, and which I have felt obliged upon former Occasions to consider with much Care. I came to the Opinion to which I adhere, that in the peculiar Circumstances of this Country Her Majesty's Judges, without deviating from their judicial Duty, may, in their Discretion, when their Opinions upon any Question *under the existing Laws* are desired, and the Occasion seems to them to require it, deliver such Opinions to the Legislative Council of India, the Delivery of such Opinions being always a public Act.

Whether an English Judge can, without a Deviation from his Duty, deliver publicly, and to be preserved as Matter of Record, his Opinion upon *a Law contemplated only*, is a different Question. This is in truth an Advice offered by the Judge to the Legislature on a Matter of Legislation, which is a Thing foreign to the Judge's Office, for which he cannot be officially responsible, and a Thing equally foreign to his Habits, to which he is not usually over competent; while on the other hand it may lead to those who alone are responsible for Acts of Legislation sharing their Responsibility in public Opinion with others to whom no such Responsibility can lawfully attach. This I think Matter of very grave Consideration, and I am therefore of opinion, that, with the Exception of Forms of Proceeding in his Court, with which, and their

Usefulness and Defects, those who preside in the Court must be considered to be best acquainted, the most that a Judge ought to do when so consulted is to state what in his Opinion the Law administered in his Court now is, in the respect in question,—what practical Inconveniences are found in it,—and in what Manner and to what Extent the proposed Law will alter practically or in Principle the existing Law ; affording to the Legislature all the Materials for forming their Opinions upon the Expediency of the proposed Law which his Knowledge enables him, but offering no Opinion of his own.

I regret that I cannot at present see how I can consider myself competent to afford to your Honourable Council any Information of this Nature, as concerns the contemplated Code of Criminal Law, with reference to the System of Criminal Law which Her Majesty's Supreme Court of Judicature at Fort William has hitherto administered, and now administers, namely, the Criminal Law of England, as embodied in the 9 G. 4. c. 74., altered and amended by your Legislative Act of 3d of December 1838, being No. 31 of 1838, adopting the Alterations introduced in England by Parliament in Her present Majesty's Reign.

I observe that in the Letter to the Governor General in Council, prefixed to the Copy of the Code with which I have been furnished, the Indian Law Commissioners declare, that, for Reasons which had been fully stated to his Lordship in Council in another Communication, they have not inserted in the Code any Clause declaring to what Places and to what Classes of Persons it shall apply ; whether any Parts of it, therefore, or if so what particular Parts, are proposed to apply to the Places or Classes of Persons over which or whom the Criminal Jurisdiction of Her Majesty's Supreme Courts of Judicature extends, cannot be known to me.

The Jurisdiction of the Supreme Court of Fort William extends over all Persons in Calcutta, and beyond this it extends without Limitation in respect of Territory, but in respect of Persons only, over all the Territories subject to the Government of the Presidency, all Persons within that Territory of certain Descriptions being amenable to this Jurisdiction.

I presume that it is not probable that Persons resident in what is called the Mofussil, but subject to the Jurisdiction of the Supreme Court, shall be placed under the Laws forming the new Code, unless the new Code is intended to supersede the Laws of England generally in all Cases within the Jurisdiction of Her Majesty's Courts, since it is probable that the Legislature would be struck with the Inconvenience of Crimes committed by Persons of the same Description being tried in the same Court under different Systems of Law in Cases arising in different Parts of the same Country.

But whether the Inhabitants of Calcutta should remain, as for so many Years past, living under the Criminal Laws of England, the British Subjects in the Mofussil being alone, of those subject to the Jurisdiction of the Queen's Court, subjected to the new Code, or whether the new Code should be declared the Law for all the Inhabitants of British India, the new Code would entirely subvert, and, as a whole, supersede "the System of Criminal Law which the " Supreme Court has hitherto administered ;" in the latter Case in the whole Extent of its Jurisdiction ; in the former Case in a large and very material Part of it.

It would not seem that the Honourable the Court of Directors had contemplated this entire Change of the Law administered by the Supreme Court as affecting the whole or a Part of the several Descriptions of Persons subject to its Jurisdiction, since they point at obtaining from its Judges Reports upon " different Parts of the Code, with reference to the System of Laws they have " heretofore administered."

Now it appears impossible to state anything, either in the way of Information or in the way of suggesting probable Consequences for Consideration, if this were to be done, which could throw Light upon the Operation of particular Parts of a new Code of Laws, with reference to an old System of Laws, until it is known what particular Parts of the new Code are to be ingrafted upon that old System.

But if the Intention be to abolish the old System of Laws, and to substitute in its Stead the new Code, then it cannot be particular Parts of the Code which are to be considered with reference to the old System, but the new Code as a whole with Reference to the old System as a whole.

Judging

Judging from the Letter to the Governor General, prefixed to the Code, which may be considered as the Preface, there appears no Intention in the Codists to introduce their Code by Parts into any Place or among any Class of Persons, and it is therefore not probable that it is so framed as to be well adapted for the Reception of particular Parts separated from the rest into any existing System ; on the contrary, a Claim is entered for it as forming “ a Body of Law,”—“ not a Digest of any existing System,” but to which “ no existing System has furnished even a Groundwork,”—a new “ System fundamentally different from any the Codists have found India in possession of, rejecting the Criminal Law of the Hindoos as long ago superseded by that of the Mahomedans,” and as certainly the last System of Criminal Law which “ an enlightened and humane Government would be disposed to revive,”—rejecting the Mahomedan Criminal Law as “ in its Turn superseded to a great Extent by the British Regulations,”—rejecting each and all of the Three Bodies of Regulations made by what are styled the “ Three different Legislatures ” of the Three Presidencies, none of whom, by the way, had any Powers of Legislation, as “ Systems of Penal Law widely differing from each other,” and as “ not any One of them to be recommended as furnishing even the Rudiments of a good Code,”—and, finally, “ rejecting the English Criminal Law, as a very artificial and complicated System,—a Foreign System which was framed without the smallest Reference to India,—a System which even in the Country for which it was framed is generally considered as requiring extensive Reform, a System, finally, which had just been pronounced by a Commission, composed of able and learned English Lawyers, to be so defective that it can be reformed only by being entirely taken to Pieces and reconstructed.”

I am not called upon to deliver an Opinion upon the Soundness or Extravagance of the Condemnation here stated to have been pronounced upon the whole Criminal Law of England in the Mass. But it is evident that the learned Codists who have adopted this Condemnation have framed their Code not with a view to its Adaptation either in whole or in part to any existing System of Criminal Law, and least of all to the “ English Criminal Law,” which they are of opinion is a System not only unfit for India, but, as appears, for any Nation of civilized Men.

If, therefore, it shall be determined to leave the British Subjects and others who are now subject to the Jurisdiction of the Supreme Court still under the Laws of England, subjecting those only to the Operation of the new Code who are now amenable to the Courts of the Provinces, then there should not seem to be any Information which Her Majesty’s Judges could give, or any Observations or Suggestions which in their judicial Capacity they could offer to your Honourable Council, upon the important Work in hand.

The new Laws, not having Effect within the Jurisdiction of the Supreme Court, their mere Contiguity, although undoubtedly not altogether without Influence upon the Operation and Efficacy of the Laws administered by the Supreme Court in the Mofussil, would not seem sufficient to excuse my overstepping the ordinary Line of my Duty by obtruding upon your Honourable Council any Observations of mine upon that new Code.

If again Parts, but Parts only, of the Laws it proposes, are intended to be ingrafted upon the System of English Criminal Law now administered by the Supreme Court, corresponding Parts of the English Laws being cut away to make Room for them, then it is impossible that I should comply with your Desire until I know what Parts of the One Set of Laws are to be so ingrafted, and what Parts of the other Set to be so cut away.

But if it be proposed to introduce the new Code as a whole, to supply the Place of the Criminal Laws of England within the Jurisdiction of Her Majesty’s Supreme Court, then the Work which you have done me the Honour to desire my Assistance in the Review of, by such Observations and Suggestions as may be dictated by my Acquaintance with the Subject, is no other than an entire Code of Criminal Law, not constituting a Digest of any Laws, or resting even as its Groundwork upon any System of Laws which have ever had any Existence as a whole in any Age or Nation, or have ever undergone the only sufficient Test of Human Institutions, the practical Experience of some considerable Portion of Mankind.

Next to the Boldness of undertaking such a Work, I should consider that of undertaking to review it ; and although I observe that the learned Codists,

having only received the Orders of the Government for the Formation of the Code on the 15th of June 1835, and having laid it complete before the Government on the 2d of May 1837, have thought it not unnecessary to offer the Circumstance of the Commission having been rendered almost entirely inefficient by the ill Health of the Majority of the Members during great Part of One of the Years employed in the Work, as an Apology for their not having completed it many Months sooner, yet I confess that I cannot set a Limit to the Number of Years which it would be necessary for me to devote exclusively to the Consideration and Study of such a Code, and of all the large, and intricate, and appalling Questions with which it must be of Necessity surrounded, if I could think it consistent with my judicial Duties, and the Measure of my Learning and Capacity, to undertake so vast a Task, in so untried a Path of speculative Jurisprudence and Legislation.

I have, &c.

(Signed) J. P. GRANT,

Puisne Judge of H. M. Supreme Court at Fort William.

No. 97.

NOTE by A. Amos Esq.

I THINK Sir J. Grant should be informed that Government conceive it to be an Object proposed by the Code, that the Judges of the Supreme Court shall administer the Criminal Law as enacted in the Code, instead of the Criminal Law which they now administer.

As it would seem that an inconvenient Length of Time must elapse before Sir J. Grant could favour us with his Opinion upon the whole Code, we should be obliged by his Observations upon such Parts of it, and at such Intervals of Time, as his Leisure may permit. Government would consider that the public Interests would be benefited by his Remarks on One, Two, or more Chapters or even Paragraphs taken promiscuously, according as his peculiar Experience may suggest to him, that the Provisions of the Code, whether in substitution of or in addition to those of the Criminal Law now administered by the Supreme Court, would or would not be attended with practical Utility.

(Signed) A. AMOS.

No. 98.

The COUNCIL in INDIA to the Hon. Sir J. P. GRANT Knight.

(Legislative Department.)

Honourable Sir,

Fort William, 14th October 1839.

WE have the Honour to acknowledge the Receipt of your Letter of the 28th ultimo.

2. We conceive it to be an Object proposed by the Framers of the Code, that the Judges of the Supreme Courts shall administer the Criminal Law as enacted by the Code instead of that which they now administer. We think, therefore, that the public Interests will be greatly benefited by any Observations upon the proposed Law, viewed as a Substitute for the English Criminal Law, where that Law is now in force in India, which the Judges who have had Experience in the Administration of that Law in India, and who are eminently qualified to give an Opinion upon its working, may be so obliging as to communicate.

3. We perceive that Observations on the whole Work, according to your Views, would occupy an inconvenient Time; but we should feel greatly obliged, and we are sure that the public Interests would be much benefited, if we were favoured, at such Intervals of Time as your Leisure would allow, with your Observations, whether generally on the Project, or on any One, Two, or more Chapters, or even Clauses taken promiscuously, according as your peculiar Experience may suggest, that the Provisions of the Code, whether in substitution

tion of or in addition to those of the Criminal Law now administered by the Supreme Court at Calcutta, would or would not be attended with practical Utility.

We have, &c.
(Signed) T. C. ROBERTSON.
W. W. BIRD.
W. CASEMENT.
A. AMOS.

No. 99.

The Hon. Sir H. W. SETON Knight, Puisne Judge of the Supreme Court at Fort William, to the COUNCIL of INDIA.

Court House, Fort William,
22d October 1839.

Honourable Sirs,

I BEG to acknowledge the Receipt of the Letter which you did me the Honour to address to me on the 12th August last, accompanied by a Copy of proposed Penal Code for India.

I have availed myself of the Opportunity afforded by the Vacation of looking into its Contents, and, in compliance with the Wish you are pleased to express, beg to offer such Observations as have occurred to me on the Perusal of it.

In so doing I should wish to be understood as not offering them in my official Character, but simply from my Wish, as an Individual, to give any Assistance in my Power to those upon whom the Duty of deciding upon a Matter of such Magnitude and Importance has devolved.

I am also sensible that the greater Part of them (if worthy of Attention at all) are more fit to be submitted to those to whom the future Revision of the Code may be intrusted than worthy of being brought to the immediate Attention of the Government; but I have not thought it necessary on that Account to withhold them, as they may still, if it is thought fit, be made available for that Purpose.

Before entering upon the Consideration of the Code itself I shall take the Liberty of submitting a few Observations respecting Codes generally.

The Expediency of adopting a Code must be estimated with reference to the Expectations entertained from it.

If it is supposed that it will have the Effect of fixing the Law, so as in a great Measure to supersede the Necessity for future Litigation, no Expectation can be more unfounded.

The Law is a Collection of Rules established principally by Decisions upon Questions to which the daily Wants and Necessities of Mankind have given rise.

So far as such Cases have arisen and such Rules been established, a Code may be most useful in collecting and methodising them.

But Law has a further Object, to provide for the future Wants and Necessities of Mankind, which are ever varying and renewing, and which no Human Foresight can ever fully anticipate.

This can never be effected by a Code, and can only be effected by Decisions upon such Questions as they arise.

These Decisions may and ought to be made with reference to prior Decisions and Authorities, but can never be wholly superseded by them.

All, therefore, that can be reasonably expected from a Code is, that it should afford a Base upon which subsequent Decisions may be founded.

It may prevent Litigation in those Cases in which former Decisions were conflicting or obscure, but not further. On the contrary, until the Import of its Provisions has been ascertained by judicial Construction, the immediate Effect of it must necessarily be, to a certain Extent, to increase Litigation, particularly in a Case like the present, where the ordinary Language of the Law, the Import of which has been long fixed by Constructions, has not only not been retained, but has been studiously avoided.

With respect to the Code itself, the First Observation which suggests itself is as to the Number of new Offences created by it.

Every Wrong may be considered either as an Injury to an Individual or to the Public, although it usually involves both.

In the former Case it is termed civil; in the latter criminal.

In the former it is the Subject of Compensation ; in the latter of Punishment. The Law of England does not afford Redress to all Wrongs, either public or private.

It, like most other Systems of positive Law, affords no Redress for the Breach of moral Duties as such.

In some Cases of Injuries of a public as well as private Nature, it affords no public Redress, as in the Case of Adultery.

In many Cases of private as well as public Injury it affords no private Redress, but throws upon the Party already suffering under the private Injury the additional Burden of procuring public Redress, as in the Case of all Felonies.

In some Cases of private Injury it substitutes Punishment for Compensation, as in the Case of Imprisonment for Debt.

The Consideration of these Anomalies suggests the Question, how far it would be desirable in any improved System to combine both Objects, by the Extension of Compensation to criminal Injuries, or Punishment to civil ones.

The former Object appears to be greatly preferable to the latter.

It is obvious that those Injuries which are capable of being fully redressed by Compensation should not be made the Subject of Punishment.

Compensation often itself operates as a Punishment, and may supersede the Necessity of it.

Punishment (except in the Case of Fine, and in this only where it is awarded to the Party injured,) can never operate as a Compensation.

With these Views it seems to be desirable to extend, as far as practicable, the Operation of Compensation, and limit that of Punishment.

The more ancient Laws were not opposed to these Principles. They admitted of Compensation even in the Case of Murder.

Trespasses of various Kinds, from the earliest Times to the present, have been treated, at the Option of the Party, either as civil or criminal Injuries ; and it has long been one of the Objects of the Legislature at Home, and which has lately been accomplished to a considerable Extent, to narrow the Operation of Imprisonment for Debt.

The Tendency of Civilization is to multiply civil Rights, and by extending and facilitating civil Remedies to supersede, as far as practicable, the Necessity of criminal Ones.

The above Views are not suggested as opposed to those contained in the Code, but it may fairly be questioned whether they are sufficiently kept in view in the Multitude of new Offences created by it.

Many Injuries of a Kind which have never heretofore (at least by the Law of England) been made criminal, and have been considered to be sufficiently guarded against by civil Remedies, are not only made penal by the Code, but so made without any express Provision for the Preservation of the civil Remedy, which without such Provision might be considered to be extinguished.

Instances of this will be noticed hereafter more in detail.

There is a further Objection to all Multiplications of Offences.

The greatest Abuses of the Law arise from the Opportunities which it affords to the Indulgence of the vindictive Passions.

This, though not excluded from civil, is more frequently to be observed in criminal Proceedings, and affords a strong Reason for not unnecessarily multiplying them.

A Code in which a hasty Word might be treated as a criminal Offence would be capable of being perverted to the most mischievous Uses, even among a People not addicted to litigious Propensities.

The Policy of the Law of England, in denying criminal Redress to verbal Slander, affords no unfavourable Specimen of its practical Wisdom.

With respect to the Code itself, there is another Observation of a general Nature to which Attention is forcibly drawn in the Perusal of it.

I allude to the Language in which it is conveyed, and more especially to the Definition of Crimes contained in it.

Considering the Habits of those to whom criminal Legislation is chiefly addressed, the Demand for plain Language and definite Precepts seems to be irresistible.

How far this is supplied by the Code, with all the Assistance derived from its Illustrations, may be fairly questioned.

We may not be able to attain the Simplicity of the ancient Models.

The

The Commandment, "Thou shalt not steal" (although conveying the Substance of it, and especially to those chiefly concerned in such Precepts), may not be capable of wholly superseding a Digest of Larceny; but if recourse must be had to technical Language for the Development of it (as must be admitted), it may be doubted whether much is gained by the Substitution of the Subtleties of the Schools, either ancient or modern, for the occasionally uncouth but usually precise and significant Phraséology of the Law.

With respect to the Illustrations of the Code, so abstract and complicated are some of the Notions attempted to be conveyed by the Definitions to which they are appended that it may be doubted whether the Legislators themselves were not induced in the first instance to resort to them in order to ascertain that they understood their own Meaning, and whether they were not afterwards retained by them from a Conviction that it was hopeless to expect a similar Degree of Intelligence from others without the same Assistance.

The Object seems to have been to exclude judicial Discretion.

But however desirable it may be (and to none more than to Judges) to limit judicial Discretion, it is in vain to attempt wholly to exclude it by Definitions, however illustrated.

The Terms, "fraudulently," "unjustly," &c., so frequently resorted to by the Code, obviously because no other Definitions were practicable, are so many Admissions of the Fact, and must ever render the Code, with all its Precautions, mainly dependent for its practical Operation upon the Discretion of those by whom it is administered.

With respect to the Expediency of framing a Code for this Country at the present Time, if the Attempt were to be delayed until all the Information which theoretically might be considered desirable were obtained it could never be made.

The best Justification of it seems to be found in the Necessity of some System, the Absence of any satisfactory one, and the Hopelessness of constructing a more perfect one, except by means of successive Improvements upon this.

The Code itself, however, furnishes abundant Reasons why it should not be put into operation until the whole System is completed.

This will afford the Means of extending civil Rights and Remedies, and may be found to modify or supersede many of the present Provisions of it.

I have subjoined in a separate Paper (A.) such Observations as have occurred to me upon the Details of it.

These, as well as those which I have already had the Honour of submitting, are made with Freedom, but not in a hostile Spirit; not without a just Sense of the great Difficulty of the Undertaking, of the Pains bestowed upon the Execution of it, and above all of the masterly Manner in which the Principles connected with it are discussed and developed in the Notes.

I have the Honour to be, &c.

(Signed) H. W. SUTTON.

P.S.—Since the Receipt of your Letter, the Fourth Report of the Criminal Law Commission in England has reached me, together with a Pamphlet, written by my Friend, Mr. Miller, of Lincoln's Inn, "On the present State of the Law" and its Administration in England," valuable as the Production of one who has long directed his Attention to the Improvement of the Law, and who brings to that Study the Advantage of an Acquaintance with the Laws of other Countries as well as those of his own.

As each of these contain Matter bearing directly upon the Topics discussed in this Letter, I have taken the Liberty of subjoining Extracts from them in a separate Paper (B.)

(A.)

CODE.

Sec. 7. The Word "Party" denotes Collection of Persons as well as Persons.

OBSERVATIONS.

Q. The Use of "Party" for "Person?" The Word "Party," in a legal Sense, signifies a Person who is Party in a Cause or to a Deed, &c.

It implies the Existence of some other Party.

It is a Person of a particular Description.

Sec.

Sec. 19. Property is not said to be in the Possession of any Party other than a Person.

Sec. 21. The Word "Document" is not used to denote any Matter, except Matter the whole or Part whereof is in Handwriting. Therefore a printed Handbill or a lithographed Letter, no Part of which was meant by the Engraver to be taken for Manuscript, is not a Document; but a single Word, or a single Letter, or significant Mark, if that Word, Letter, or Mark be in Handwriting, or be meant by the Maker thereof so to appear, is a Document, is sufficient to make the whole of the Matter connected therewith a Document, and every Part of that Matter Part of a Document.

Sec. 22. The Words "valuable Security" denote a Document which is, or purports to be, a Document whereby any legal Right is created, extended, transformed, restricted, extinguished, or released; or whereby any Party acknowledges that such Party lies under legal Liability, or has not a certain legal Right.

Sec. 31. The Words "intelligent Consent" denote a Consent given by a Person who is not, from Youth, mental Imbecility, Derangement, Intoxication, or Passion, unable to understand the Nature and Consequence of that to which he gives his Consent.

Sec. 35. The Word "Vessel" denotes any floating Thing used for the Conveyance by Water of Human Beings or of Property.

Sec. 73. Nothing is an Offence by reason that it causes, or that it is intended to cause, or that is known to be likely to cause, any Harm, if that Harm is so slight that no Person of ordinary Sense and Temper would complain of such Harm.

Sec. 85. Abetment is of Two Kinds, previous Abetment and subsequent Abetment.

Sec. 87. A Person is said previously to abet an Offence who previously abets the doing of a Thing which is an Offence, not being under any Misconception, such that if a Person being under that Misconception did that Thing the doing of that Thing would not be an Offence.

Sec. 89. A, by putting B in fear of Death, induces B to burn a Stack of Corn belonging to Z. Here A is liable both to the Punishment provided for burning such a Stack of Corn and to the Punishment of criminally putting B in fear of Death.

Sec. 93. Whoever, being present while any Offence punishable with rigorous Imprisonment for a Term of One Year or upwards is committed, previously abets that Offence by instigating the Offender to persist in the Commission of that Offence, shall be punished with Imprisonment of

The sole Object of this Explanation seems to be, to convert Theft from a Body of Persons into Criminal Breach of Trust. (See Sec. 363.)

If so, whether it does not fall under the Rule as to General Exceptions, Note B., page 15, viz., that it ought to be appended to the Rule which it is intended to modify?

Why should not Property in the Possession of a Body of Persons be protected from Theft? It is so by the Law of England.

Why should the Term "Document," which in a popular Sense has a more extensive Meaning, be limited to Writing, which, with the Explanation given, would exactly convey what is meant?

Why should a Gazette, a Proclamation, &c., cease to be Documents? They are usually classed among documentary Evidence by the English Law.

Whether the Explanation has not Reference solely to the Chapter relating to Offences relating to Documents, and ought not, therefore, to have been inserted in it?

Would not a cancelled Instrument be a "valuable Security" under this Clause?

Whether the Word "Consent" does not necessarily import the Capacity of the Party giving it?

Does a Vessel cease to be so when sunk? Is not a Floating Light a Vessel?

Whether this might not be left to the Discretion of those by whom the Law is to be administered?

Whether this Clause affords any other Security?

Why omit Abetment simply; viz., "being present at and aiding?" (See the Want of it, Sec. 93.)

"Not being under any Misconception."

Does this mean being aware that the Act is an Offence? If so, it is expressed with great Obscurity.

If not, what does it mean? (See also Sec. 99.)

Whether "putting in fear of Death" is made an Offence by the Code? (See Sec. 482.)

Whether being present instigating, &c. can be said to be previous Abetment? (See Sec. 85.)

either Description for a Term which may extend to One Fourth Part of the longest Term provided for that Offence, or Fine, or both.

Sec. 105. Whoever, knowing that an Offence has been committed, and knowing himself to be directed by Law to give Information *in any Quarter* of that Offence, subsequently abets that Offence by intentionally omitting to give such Information, shall be punished, &c.

Sec. 142. Whoever, being a Judge pronounces on any Question which comes before him in any Stage of any Judicial Proceeding a Decision which he knows to be unjust, shall be punished with simple Imprisonment for a Term which may extend to Two Years, or Fine, or both.

Sec. 143. Whoever, being a Judge, for any Purpose of Favour or Disfavour to any Party, disobeys any Direction of the Law of Procedure, shall be punished with simple Imprisonment for a Term which may extend to One Year, or Fine, or both.

Sec. 149. Whoever, being a public Servant, knowingly, and without any reasonable Excuse, disobeys any lawful Order issued by his official Superior or Superiors for his Guidance in the Discharge of his public Functions, or offers any intentional *Insult* to any of his official Superiors, or knowingly, without any reasonable Excuse, neglects the Discharge of his official Duties, shall be punished with Fine, &c.

Sec. 152. Whoever absconds in order to avoid being served with a *Summons* or *Notice* proceeding from any public Servant or Body of public Servants, being competent as such public Servant or as such Body to issue such *Summons* or *Notice*, shall be punished with Imprisonment of either Description, for a Term which may extend to One Month, or Fine which may extend to Five hundred Rupees, or both.

Sec. 187. If any Person, by doing anything whereby he commits an Offence under the last preceding Clause, also commits an Offence under any other Clause of this Code, the Punishment shall be cumulative.

Sec. 190. Whoever gives or fabricates false Evidence shall, except in the Case herein-after excepted, be punished with Imprisonment of either Description for a Term which may extend to Seven Years and must not be less than One Year, and shall also be liable to Fine. A Person who fabricates false Evidence, intending thereby to save himself from Conviction for an Offence, and not intending nor knowing it to be likely that the false Evidence so fabricated may cause any Injury to any other Party, is not within the Penal Provision of this Clause.

Sec. 194. Whoever claims any Property, knowing that he has no rightful Claim to such Property, or practises any Deception touching any Right to any Property, intending thereby to prevent that Property from being taken as a Forfeiture or in satisfaction of a Fine under a Sentence which has been pronounced, or which he knows likely to be

“ In any Quarter ”

Q. Unnecessary ? — and see Sec 283, Sec. 441, Sec. 469.

Who is to decide what is unjust, and how is the Knowledge of it to be proved ?

Q. The Policy of exposing Persons in Office to vague and vexatious Criminal Charges ?

All Laws of Procedure must be occasionally dispensed with or become intolerably oppressive, as in the Case of Sickness, &c., and every Dispensation must be Matter of Favour.

Also, Q. The Policy of this Enactment ? (See Sec. 142.)

“ Insult.” Q. The Creation of an Offence so indefinite ?

Q. The Multitude of new Offences created by this Chapter ?

Are the Offences contained in this Chapter to be the only Contempts liable to Punishment ?

If so, Q. What is to be the Provision for enforcing Decrees, Orders, &c. ? Is any Party to be at liberty to set the Law at defiance who is willing to submit to a limited Fine and Imprisonment ?

Q. The making Offences cumulative ?

Q. The making them so to the Extent proposed in this Chapter ?

Q. This Exception.

Why should a just Punishment be evaded by fabricated Evidence, any more than a just Demand ? The English Law (practically at least) treats a Defence supported by Perjury as an Aggravation of the Offence. Why depart from so sound a Principle, and surrender all the moral Considerations so forcibly insisted on in the Note ?

Q. The making a wrongful Claim to Property a Criminal Offence ? — and see Sec. 196.

pronounced by a Court of Justice, or from being taken in Execution of a Decree which has been made, or which he knows to be likely to be made by a Court of Justice in a Civil Suit, shall be punished with Imprisonment of either Description for a Term which may extend to One Year, or Fine, or both.

Sec. 196. Whoever fraudulently or for the Purpose of Annoyance institutes any Civil Suit, knowing that he has no just Ground to institute such Suit, shall be punished with Imprisonment of either Description for a Term which may extend to One Year, or Fine, or both.

Sec. 199. Whoever directly or indirectly holds out any Threat of any Injury to any Person, for the Purpose of inducing that Person to refrain or desist from instituting, prosecuting, or defending any Civil Suit, or from taking any legal Step incident to or consequent upon such Institution, Prosecution, or Defence, or from giving Evidence in any Stage of any Judicial Proceeding whatever, shall be punished with Imprisonment of either Description for a Term which may extend to Two Years, or Fine, or both.

Sec. 233. Whoever counterfeits the King's or the Company's Coin shall be punished with Imprisonment of either Description for a Term which may extend to Seven Years and must not be less than Two Years, and shall also be liable to Fine.

Sec. 241. Whoever having any counterfeit Coin which is a Counterfeit of the King's or the Company's Coin, and which at the Time at which he becomes possessed of it he knew to be a Counterfeit of the King's or the Company's Coin, delivers the same to any other, or attempts to induce any other to receive it, with the Intention that such counterfeit Coin shall pass as genuine, shall be punished with Imprisonment of either Description for a Term which may extend to Seven Years and *not be less than Two Years*, and shall also be liable to Fine.

Sec. 244. Whoever is in possession of counterfeit Coin which is a Counterfeit of the King's or the Company's Coin, having known at the Time when he became possessed of it that it was counterfeit, and intending or knowing it to be likely that such counterfeit Coin may pass as genuine, shall be punished with Imprisonment of either Description for a Term which may extend to Seven Years and must not be less than Two Years, and shall also be liable to Fine.

Sec. 245. Whoever performs on any Coin any Operation which diminishes or alters the Composition of that Coin, with the Intention that the said Coin shall pass as if its Weight had not been so diminished or its Composition so altered, shall be punished, &c.

Sec. 167. Whoever, being in charge of any Vessel, conveys for Hire any Person by Water in that Vessel when that Vessel is in such a State or so loaded as to endanger the Life of that Person, shall be punished, &c.

Q. The Consequence of such an Enactment? Would it not be that every unsuccessful Civil Suit might be converted into a Criminal Prosecution.

Q. Whether Costs are not a sufficient Preventive, or might not be made so?—and see Sec. 194.

Whether a Threat to make a Party pay the Costs of a vexatious Suit in order to deter him from instituting it should be made a Criminal Offence?

Q. The Number of vague Offences created by this Clause?

Whether Offences against the King's Coin do not fall under the same Consideration as Offences against the British Government? See Note C, and see Sec. 235.

A wins a Pool at Commerce in which he finds a bad Shilling, which he puts into the next Pool as his Stake.

Must he be imprisoned for not less than Two Years?

A gets Possession of counterfeit Coin with a view to destroy it, knowing it to be likely that such counterfeit Coin may pass as genuine if left in the Possession from which he takes it. Must he be imprisoned for not less than Two Years?—and see Sec. 243.

Diminishes the Weights, &c. or alters the Composition, &c.

Q. Impairs the Value, &c.? (See Sec. 247.)

Q. Where Damage occurs in the Voyage?

Sec. 280. Whoever, with the Intention of wounding the Feelings or insulting the Religion of any Person, commits any Trespass on any Place of Sepulture, offers any Indignity to any Human Corpse, or causes any Disturbance to any Assembly assembled for the Performance of Funeral Ceremonies, shall be punished with Imprisonment of either Description for a Term which may extend to One Year, or Fine, or both.

Sec. 299. Voluntary culpable Homicide "is voluntary culpable Homicide in Defence," which is committed by causing Death under such Circumstances that such causing of Death *would be no Offence* if the Right of private Defence extended to the voluntary causing of Death in Cases of Assault not falling under any of the Descriptions enumerated in Clause 76, or in Cases of Theft, Mischief, or Criminal Trespass not falling under any of the Descriptions enumerated in Clause 79.

Sec. 305. If the Act or illegal Omission whereby Death is caused in the Manner described in the last preceding Clause be, apart from the Circumstance of its having caused Death, an Offence *other than the Offence* defined in Clause 327, or an Attempt to commit an Offence, the Offender shall be liable to the Punishment of the Offence so committed or attempted, in addition to the Punishment provided by the last preceding Clause.

Sec. 325. Whoever wrongfully confines any Person for Ten Days or more shall be punished with Imprisonment of either Description for a Term which may extend to Three Years, in addition to Three Days for every Day of such wrongful Confinement, and must not be less than Six Months, in addition to One Day for every Day of such wrongful Confinement, and shall also be liable to Fine.

Sec. 339. A Person is said to use *Force* to another if he causes Motion or Change of Motion to that other, or if he causes to any Substance such Motion or Change of Motion or Cessation of Motion as brings that Substance into contact with any Part of that other's Body, or with anything which that other is wearing or carrying, or with anything so situated that such Contact affects that other's Sense of Feeling, provided that the Person causing the Motion, or Change of Motion, or Cessation of Motion, causes that Motion, Change of Motion, or Cessation of Motion in One of the Three Ways herein-after described.

First—By his own bodily Power.

Secondly—By disposing any Substance in such a Manner that the Motion, or Change or Cessation of Motion, takes place without any further Act on his Part, or on the Part of any other Person.

Thirdly—By inducing any Animal to move, to change its Motion, or to cease to move.

Sec. 348. Whoever assaults any Person, meaning thereby to *dishonour* that Person, otherwise than on grave and sudden Provocation given by that Person, shall be punished with Imprisonment of either De-

Whether Marriage Ceremonies do not equally require to be protected?

"Would be no Offence if." Does this mean would not be justified by the Right of Defence of the Body (Sec. 76) or of Property (Sec. 79)?

Q. Defining a Criminal Offence by Reference to an Hypothesis as to other Offences?

"Other than the Offence defined."

Q. Defining an Offence by Reference to another; not specifically, but as contained in a subsequent Section of the Code?

Q. Retaliatory Punishment. Reliques of Barbarism, have always the Appearance of Vindictiveness, and see Sec 336, 337

The Definition of Force.

Q. Whether not better omitted?

Q. Whether the Meaning of actual Force might not be left to Common Sense, and constructive Force only defined?

The present Definition seems to be better suited to a Treatise on Dynamics than a Code of Law.

"Dishonour." Q. The Use of so vague a Term in a Criminal Code?

scription for a Term which may extend to Two Years, or Fine, or both.

Sec. 363. Whoever, intending to take fraudulently anything which is Property, and which is not attached to the Earth, out of the Possession of *any Person*, without that Person's Consent, *moves that Thing* in order to such taking, is said to commit "Theft."

(W.) A and Z are *joint Proprietors* of a Horse. A takes the Horse out of Z's Possession, intending to use it for a Time. A has not committed Theft. But if A takes the Horse fraudulently out of Z's Possession, intending to carry it away altogether, or to sell it, and appropriate the whole Price, A commits Theft.

Sec. 386. Whoever, being intrusted with the keeping of any Property or with any Dominion over any Property, and intending fraudulently to cause wrongful Loss or Risk of wrongful Loss to any Party for whom he is in trust, disobeys any Direction of Law prescribing the Mode in which such Trust is to be discharged, or violates any legal Contract, express or implied, which he has made, touching the Discharge of such Trust, with any Party from whom such Trust was derived, is said to commit "Criminal Breach of Trust."

Sec. 392. Whoever, by intentionally deceiving any Person, fraudulently induces the Person so deceived to deliver any Property to *any Person*, or to consent that any Person shall retain any Property, or to affix a Seal to any Substance, or to make, alter, or destroy the whole or any Part of any Document which is or purports to be a valuable Security, is said to "cheat."

(g) A intentionally deceives Z into a Belief that A means to repay any Money that Z may lend to him, and thereby fraudulently induces Z to lend him Money. A cheats.

(h) A intentionally deceives Z into a Belief that A means to deliver to Z a certain Quantity of Indigo Plant, and thereby fraudulently induces Z to advance Money. A cheats.

(i) A intentionally deceives Z into a Belief that A has performed A's Part of a Contract made with Z, and thereby fraudulently induces Z to pay Money. A cheats.

(k) A, by exaggerating the Excellence of an Article on Sale, intentionally deceives Z, and induces Z to buy, and pay for that Article. Here A has, by intentionally deceiving Z, induced Z to deliver up Property. The Question whether A has cheated will depend on the Question whether he acted fraudulently, that is to say, whether he intended to cause wrongful Gain to himself by means of wrongful Loss to Z. If the Deception practised by A were such that A has, notwithstanding the Deception, a legal Right to the Price as soon as it has been delivered to him by Z, no Gain which the Law pronounces to be wrongful has been intended. A therefore has not acted fraudulently, and has not cheated. But if the Deception practised by A were such that Z has a legal Right to have back the Price

Definition of Theft.

Q. The Attempt to incorporate all the Subtleties of the English Law of Larceny in a single Definition "moves that Thing?"

Q. The Adoption of that Part of the Law of England which convicts the Attempt to commit a Theft into constructive Theft?

By the English Law Theft cannot be committed by a joint Proprietor.

Q. The Expediency of multiplying Offences to the Extent that they would be created by this Clause?

The Effect of it would be to convert a large Portion of what has hitherto been equitable Jurisdiction into criminal.

It was the Mixture of equitable and criminal Jurisdiction that led to the Abolition of the Star Chamber.

"Any Person." Q. To himself or to any other Person?

Q. The Conversion of so many Civil Injuries into Criminal Offences, and this without any Reservation of the Civil Remedy?

Here the Criminality of the Act is made to depend upon the Meaning of Fraud; the Meaning of Fraud is made to depend on the Meaning of Wrong; and the Meaning of Wrong is made to depend on the Decision of a Civil Tribunal.

which he has paid, there is wrongful Loss and wrongful Gain, and if A intended to cause such wrongful Loss and wrongful Gain he has acted fraudulently, and has cheated.

Sec. 399. (c) A, having insured a Ship, voluntarily causes the same to be cast away, with the Intention of causing wrongful Loss to the Underwriters. A has committed *Mischief*.

(f) A causes a Ship to be cast away, intending thereby to cause wrongful Loss to Z, who has lent Money on Bottomry on the Ship. A has committed *Mischief*.

Sec. 404. Whoever commits Mischief, intending thereby to enhance the Value of any Article, or directly or indirectly to affect the Event of any Competition, so as to cause Gain to any Person, shall be punished with Imprisonment of either Description for a Term which may extend to Two Years, or Fine, or both.

Sec. 418. Whoever exercises any Dominion over any Property, not having a legal Right, independent of the Consent of any other Party, to exercise such Dominion, and not having the Consent, express or implied, of any Party legally entitled to give a Consent which would authorize the Exercise of such Dominion, is said to "trespass."

(a) A walks into a Building, &c.

(b) A goes across Z's Field, &c.

(c) A takes up a Book belonging to Z, &c.

(d) A throws Rubbish into Z's Garden, &c.

(e) A climbs up behind Z's Carriage, &c.

(f) A goes into Z's Field, &c.

Sec. 420. Whoever commits Criminal Trespass by entering or remaining in any Building, Tent, or Vessel used as a Human Dwelling, or any Building used as a Place for Worship, or as a Place for the Custody of Property, is said to commit House Trespass.

Sec. 441. A Person is said to commit Forgery, who, &c. or, secondly, having engaged to make any Document by the Authority and according to the Direction of another, *voluntarily* omits to insert therein anything which he is directed by that other to insert therein, intending that it may be believed *in any Quarter* that the Document is made according to that other's Direction.

Sec. 466. Every Man who by Deceit causes any Woman who is not lawfully married to him according to the Law of Marriage under which she lives to believe that she is lawfully married to him according to that Law, and to cohabit with him in that Belief, shall be punished with Imprisonment of either Description for a Term which may extend to Fourteen Years and must not be less than Two Years, and shall also be liable to Fine.

Sec. 479. Whoever defames another shall be punished, &c.

"Mischief." By the English Law, these are Capital Offences, where Life is endangered.

A, a Collector, having a duplicate Specimen, destroys it in order to enhance the Value of the remaining One.

Is he to be punished?

Q. Whether in any of the Cases put Dominion can be properly said to be exercised?

Q. The Separation of House Trespasses from Theft, which in so large a Majority of Cases is the sole Object of them?

"Voluntarily."

Q. Wilfully?

A, believing his former Wife to be dead, marries B. He afterwards discovers that she is alive, but conceals the Fact from B.

Must he be imprisoned for not less than Two Years?—and see Sec. 467

Q. Whether verbal Slander should be made criminal?

Q. The Policy of multiplying Offences of a petty and vexatious kind, and among a litigious People?

Sec. 481. Wherever Defamation is committed by means of any printed or engraved Substance, *whoever first sells or offers for Sale that printed or engraved Substance* shall be punished with simple Imprisonment for a Term which may extend to Two Years, or Fine, or both.

"First sells, or," &c.

Q. When Work first advertised for Sale at different Places at the same Time?

The above Observations have been suggested by a cursory Perusal of the Code. Their obvious Deficiencies will perhaps find some Excuse in the limited Portion of Time and Attention which could be devoted to them.

(B.)

Extract from Mr. MILLER's Pamphlet.

Though it appears to me that the Preparation of anything approaching to a Code for this Country (England) is equally impracticable and inexpedient, I cannot join in that unlimited Reprobation of Codes of Law which has sometimes been expressed. So far as I have had Opportunity of judging of their Contents or Operation, the Impression made upon my Mind is rather favourable than otherwise. That Codes cannot be made to supersede all old Law Authorities, or lay down specific Rules for the Determination of every occurring Case, establishes no valid Charge against them. This no System of Law ever did, or can be expected to do. However judicious or ample its Provisions may be, they cannot do more than lay down certain Rules or Maxims as Landmarks which Judges in their Determinations are bound to follow. This Object they seem in most Instances to a considerable Degree to have attained; for whatever Errors and Imperfections may attach to them, I recollect no European State in which the Introduction of a Code has been pronounced upon competent Authority to be upon the whole prejudicial. Had it been deemed so in Russia, Holland, Belgium, and the States of Italy, where the French Code was forcibly imposed upon the People, we should have expected to find it indignantly rejected as soon as that Force was withdrawn. No such Step was taken in any of those Countries. The received Code was modified, it is true, in conformity with the Genius, peculiar Institutions, and political Character of each separate State; but it has everywhere been retained, apparently not because a Return to the old Order of Things was impracticable, but because the new had been found convenient and satisfactory to the Body of the People.

Miller on the present unsettled Condition of the Law and its Administration. London, 1839. pp. 33, 34.

EXTRACT from the FOURTH REPORT of the ENGLISH CRIMINAL LAW COMMISSIONERS.

We have studiously endeavoured to express the Definitions of Crimes, and the Rules connected with them, in the most simple and intelligible Language. The Terms used to define Offences ought to be as nearly as possible in conformity to their obvious and popular Sense, and should not be involved in any artificial Meaning. Technical Terms on legal Subjects are the conventional Dialect of the Profession of the Law. When the Members of that Profession alone are addressed, as in Text Books, or practical Treatises on the Law, the Use of such Phraseology is convenient and necessary; but its Use is manifestly improper in declaring to all Classes of Society the Rules which they are bound to obey at the Peril of Punishment. On the other hand, the Employment of Terms which have an ordinary and well-understood Signification in a technical or constructive Sense, differing from their popular Meaning, is far more objectionable than the Use of Terms of Art to which no popular Meaning is attached. In the latter Case, the Law may be a dead Letter to all those who cannot understand its Meaning; in the former, the Law will not guide or direct, but in the other it will positively mislead. (See Report, p. XII.-XIII.)

It has appeared to us, therefore, that Simplicity of Expression, and the Rejection, as far as possible, of figurative or technical Language, are of the greatest Moment in the Composition of a Digest of Criminal Law. Elegance of Diction must be regarded as a Matter of inferior Importance in the Declaration of abstract Propositions and Rules; and we have not hesitated to use plain and even homely Language in our Articles, where a neater Construction of the Sentence and more refined Expressions would not have contained so effectually the Meaning of the Law.* (See Report, p. XIII.)

We are fully aware, as we have already intimated, the Attempt to describe all the minute Variations and Combinations of Facts which compose Crimes with metaphysical Exactness is visionary and absurd; but we conceive it to be quite possible, by means of correct Definitions and subsidiary Rules, to give to written Laws such an Approximation to Certainty as may facilitate the practical Administration of Justice, and at all events introduce an Improvement upon a System so vague and indefinite as the present Common

* Note.—In legibus, non tam stylus et descriptio quam auctor itas, spectanda est alias videri possit hujusmodi opus, scholasticam potius quidam et methodus, quam corpus legum imperantium. Bacon, *De Augmentis*, lib. VIII. c. 3. (*De Novis Digestis Legum*, Aph. 62.)

Law of England respecting Crimes and Punishments. In order to remove the Uncertainty introduced into our Law by the various Causes to which we have above alluded, we have carefully endeavoured to reconcile the Definitions of Common Law Crimes with the various modern Decisions by which their Nature and Qualities have been ascertained, and by such Definitions (including, of course, all suppletory Rules,) to insure, as far as possible, the simple and concise Expression of everything essential to the Construction of each Offence. Still, whatever Pains may be taken to render a Digest of the Law perfect, much must necessarily be left to Judicial Interpretation. A Digest or Code does not undertake to decide with Certainty every supposable Case. It establishes directory Principles; it defines much that was before indefinite; it supplies Imperfections and removes Inconsistencies; it effects, upon System, and simultaneously with respect to the whole Law, that which a Variety of Statutes has at different Periods attempted to effect with respect to particular Parts of the Law. But it can never supersede the Necessity for Judicial Construction, which, rightly understood and applied within certain Limits, is not only necessary but beneficial.*

We have not thought it expedient to illustrate the abstract Rules and Propositions in the Digest by particular Cases or Examples, excepting in the few Instances where such Illustrations were found already moulded into Rules, and therefore forming Part of the existing Law. It appears to us that if an Example falls clearly within the Terms of the Rule, it is useless as an Illustration, because the Rule is explicit without it; if, on the other hand, the Example borders upon the Verge of the Rule, or does not fall clearly within its Terms, it either renders the Rule doubtful, or the Example itself constitutes the Law, and the Rule becomes dependent upon it. In another Point of View, Illustrations supplied by particular Instances ought not, we think, to form Part of the Law. An Illustration cannot, as is already observed, be of any Use as a Law except to remove some Doubt which would otherwise occur as to the proper Application of the Law to the Case proposed, or to that and others of a similar Kind. But this very Necessity proves the Law to be imperfect, and shows the Framers of the Law to have been aware of an Imperfection which ought to have been remedied by using Terms which either plainly excluded or included the proposed Predicament. Laws must frequently be ambiguous in their Application, because it is impossible to foresee all the various Combinations of Circumstances to which it may be necessary to apply them; but it would argue great Negligence not to use Terms which should clearly comprehend a Case, not only within the Knowledge of the Law Maker, but even suggested by him. (See Report, p. XV.-XVI.)

I cannot conclude these Extracts without strongly recommending a Revision of the Code, with a view to the Suggestions contained in the Report.

The Soundness of its Views as to the Limitation of Criminal Offences, the Plainness of its Language, and the Clearness of its Definitions, (making due Allowance for the Difficulty of the Subject,) render it, if not a Model to be implicitly followed, One that cannot be safely lost sight of in framing a System based upon the Law of England.

No. 100.

JOHN COCHRANE Esq. to FREDERICK JAMES HALLIDAY Esq.

Sir,

Calcutta, 9th July 1838.

In compliance with the Wishes of Government, I beg leave to transmit, in the Form of a Letter to his Honour the Vice President in Council, the Observations I have prepared on the Seven first Chapters of the proposed Penal Code.

I have, &c.

(Signed) JOHN COCHRANE,

Standing Counsel to the East India Company.

JOHN COCHRANE Esq. to the Honourable the VICE PRESIDENT in COUNCIL at Fort William in Bengal.

Honourable Sir,

Calcutta, 7th July 1838.

PASSING over the "General Explanations," I come to unquestionably the most important Chapter in the Code, the one on "Punishments," and I candidly confess that I am startled at the Provisions contained in it.

It is a Chapter that over-rides the whole Work; and as I think many of its Enactments impolitic and unjust, let me, in order to clear my Way, pass over

* Note.—The Province and proper Limits of Judicial Construction were clearly comprehended by Lord Bacon when he propounded, on the one hand, the Maxim, "*Cum receditur a litera judex transit in legislatorem*," and on the other, "*Pessima tyrannis est lex inequalis*." *De Augmentis*, lib. VI c. 3. (*Exempla Antithetorum*, 46.)

without Comment the 40th, 41st, and 42d Clauses. The 43d and 44th the Framers of this Code cannot and do not imagine will escape Examination. These, Sir, are Clauses of the utmost Importance, and vitally affect the Interests of the Community and the Honour of the Government.

Before, Sir, I proceed to any minute Examination of the Policy or the Justice of maintaining them, let me see how these Clauses affect the general Mass of Society.

First, by the 43d Clause an European, or "one not both of Asiatic Birth and Asiatic Blood," may, on Punishments ranging from Seven Years to upwards, be transported for any Time within the Period of such Imprisonment (if the Government exercise such Power within Two Years after Sentence), and in addition to such, for the Purpose of *Commutation*, be banished for Life from the Territories of the East India Company :

Whereas on Punishments ranging from Seven Years to upwards the Native can be imprisoned alone.

By the 44th Clause Europeans, or the Persons I speak of, may, if the Punishments affixed range from Two to beyond Two Years of either Imprisonment, be liable, not only to Banishment for Life, but to nearly One Third of the Amount of Imprisonment into the Bargain :

Whereas the Native is liable, on Punishments ranging from Two to beyond Two Years, to Imprisonment alone.

But let me proceed still further, and see in what Position the European, or the Persons I speak of, will be placed, where the Punishment affixed to a Crime extends to One Year. If the Court act under the 47th Clause, the Offenders will be brought under the direct Operation of the 44th Clause, and Banishment for Life with nearly One Third of the Imprisonment may be inflicted upon them :

Whereas the Native is liable to One Year's Imprisonment alone.

In nearly all the Instances I have above given, it will be found that unlimited Fine is applicable cumulatively to both Natives and Europeans.

And now, Sir, before I proceed, I make my humble but my solemn Protest against such Enactments.

I have placed them as they affect the different Orders of Society in detail before you.

I have not chosen to select Crimes coming under the Chapters of Mischief, Hurt, Abetment, and others, in order to place them in Juxta-position, and to render such Enactments by Contrast ridiculous. The Task would have been easy. It is not my Object to treat such serious Clauses with Derision, but to appeal to the Understanding of those who conduct the Government.

And first, Sir, let me ask why such terrible Enactments should be proposed ? For what adequate Reason degrade the European Inhabitants, or those to whom these Clauses apply, in the Eyes of the Public ? Be assured, Sir, that such Provisions will induce Consequences the most serious to the Stability of the Government. Indeed, I know nothing so calculated to injure British Rule as Enactments such as these. They will excite Feelings of the worst Kind against the Government, in the Minds of those most likely to influence the Opinions of others.

* To my View, Sir, such Enactments are wholly unjustifiable ; and if anything could possibly justify them, such Justification would in itself be the bitterest Satire alike upon the Legislature of our own as on the Government of this Land that could possibly be pronounced.

But, Sir, if Considerations such as these which impress themselves on my Mind, and which appear to me to be founded on Reasons most obvious, find no Support in the Opinions of some, let me try whether other Arguments be not available ; and first, Sir, it seems to me, that the Authority of the Laws is best supported by the Decisions of the ordinary Tribunals, and that any Interference, if I may so express myself, on the Part of Government, is not only impolitic but unjust. In no Instance that I know of, has it ever been the Practice to vest in any Government which deserved Respect a Power of super-adding Punishments to those affixed by Courts of Justice.

It is a wise Maxim, that the Government should reserve to itself all Matters of Favour, and leave to the Magistrates the executing the Rigour of the Laws. But the varying Decisions pronounced by Judicial Tribunals, at the Will of the Executive, appears to me to have a necessary Tendency to lessen Respect for

for the Laws themselves, and to diminish that Reverence which should ever be preserved for the Decisions of Courts of Judicature.

Indeed, Sir, I have ever deemed it a Maxim in Legislation, and a Principle of the utmost Importance, to keep the judicial and executive Parts of the Government essentially distinct.

Not to do so is to run counter to every Principle which the wisest and best of Men have uniformly maintained.

It is no Answer to the Objections I have above urged, that a Power so vested in the Government is not likely to be abused. It is the Nature, I affirm, of unlimited Power, to abuse itself; and Human Laws are intended, not to trust Men with Power which possibly they may not abuse, but to guard against the Possibility of their abusing it.

But, Sir, independently of the Impropriety of vesting in the Government a Power of superadding Punishments to those inflicted by the Tribunals of the Land, the Provisions in the Sections 43 and 44 appear to me objectionable, on the Ground of the Severity of the Provisions contained in them.

From the very Foundation of the Right of punishing, and from the lawful End of inflicting Penalties, arises the Necessity of keeping them within just Bounds; but these Provisions appear only intended to create a Rule of Terror.

I have always, Sir, understood it to be a Fact, which Experience has most fully established, and which is recognized by every Government, that undue Severity of Punishment runs counter to its End.

But, Sir, it has been attempted by the Framers of this Code to maintain, that the Punishments of Natives and Europeans are not unequal. On this Point, the Contrast I have shown between their respective Punishments in the preliminary Observations on this Chapter appears to me to preclude Argument, unless Men maintain that Imprisonment and Banishment are convertible Terms.

But, Sir, the Commissioners are persuaded that Clauses such as the 43d and 44th are alike required by "Policy and Humanity;" and if the Insertion of such Clauses arose from a Desire to protect the Native Inhabitants from Injuries by Europeans, that Desire in itself would be honourable, whatever Doubts may be entertained as to the Propriety of the Enactments themselves.

I am far, very far, Sir, from denying that Instances may be produced of Cruelty and Oppression on the Part of Europeans to the Native Inhabitants; but the Impunity of such arises more from a bad Administration of the Law than from any Want of Law to restrain them. This at least is the Impression created in my Mind by Thirteen Years Residence in India. How far, Sir, vindicating public Justice on the Spot where the Crime is committed may in all Cases be carried into effect is a Matter deserving of the highest Consideration. This, Sir, is foreign to my present Objections; but I shall consider the Subject in my future Observations.

It is, Sir, the same praiseworthy Desire which has rendered the Commissioners anxious to guard, by what appear to me fearfully severe Penalties, against the Influx into India of "Europeans of lawless Habits and blasted Character;" an Evil they appear to deprecate as pregnant with Consequences most injurious to the Safety of the Government.

But let me, Sir, consider this Matter a little more attentively, and perhaps it may be found that the Commissioners are providing against an Evil which has no Existence but in their Imaginations.

And first, Sir, let me see what Field British India holds out to the Men they speak of as Men "of lawless and blasted Character."

With regard, Sir, to the mere Labourer of the Soil, the agricultural working Labourer of England would find no Place in British India but his Grave. Colonization, at least in the Way that the uninformed Mass of my Countrymen view it, is impossible. It is not a Means of taking off to any Extent the surplus Population of agricultural Labourers. The Climate prevents it. The Wages of Labour prevent it. Does the Fact justify this last Observation? The Native of Bengal supports himself, his Wife, his Children, and perhaps an aged Parent, on 2 Rupees a Month, a Sum equal to about Four English Shillings.

What other Class of Men would find Employment here? The working Manufacturers of England? The Looms of Manchester and Glasgow have

driven even the Indian Workmen from the Field; they are undersold by British Manufacture.

Where, then, shall we look for the Men of "lawless and blasted Characters" they speak of? They find no Place in honourable Employment. The few who find their Way to British India die in the Streets of the great Cities; and the only Field which India opens is to the Man of Capital. Do Provisions such as those contained in the 43d and 44th Clauses hold out any Encouragement for such Men to settle here? It is no light Matter, on the Commission of any Crime, which the wisest and best of Men from the Infirmary of Human Nature may fall into, to be liable to Confiscation of Property,—to Banishment or Transportation for Life,—at the Will of the Executive.

Do not, Sir, such Provisions indirectly strike a Blow at the 81st and 82d Sections of the Charter Act, which give Permission to all, under certain Restrictions, to reside in India?

This Observation, Sir, will not appear too refined, if the Nature of the Laws under which a Man intrusts his Property and Liberty find any Place in his Consideration.

If these and other Clauses in this Code were penned with the Intention of preventing the Resort of Europeans under the Sections last noticed, beyond all Doubt such Intention would itself be illegal.

But Enactments, Sir, such as those I am now commenting upon, are supported, not only on the Grounds of Justice and Humanity, but on Considerations connected with the Character of Government. We are told "that the Vices of such Men reflect upon their Rulers, and that the national Character will be lowered by the frequent Exhibition of Englishmen placed in degrading Situations, and stigmatized by Courts of Justice." These, Sir, are Assertions singular enough in themselves, even if they did not draw largely on the Credulity of Mankind. Their Vices reflecting on Government! I can well imagine, Sir, that if Impunity were secured to the European in the Commission of Crime, that such Impunity would reflect alike upon the Honour and Character of the Government; but it is even more than Boldness for Men to affirm, that when Englishmen are punished by the Authority of the Law that such Punishments will reflect upon the Character of the Government which carries into execution and vindicates the Authority of public Justice.

I have ever, Sir, considered it a Truth, founded on the plainest Dictates of Reason and Reflection, that the higher the Criminal stood in the State the more Honour was due to the Government that rendered him amenable to the Laws. But, Sir, let me consider whether Banishment in itself, as a public Example, be more efficacious than Imprisonment.

In the first Case the Criminal is removed from the Sight of those he has injured; in the last he is suffering the Punishment under their View. The moral Example in the former Case is nearly lost; whereas in the latter it is constantly in operation.

Which, as an Example, is most efficacious seems apparent.

The Observations, Sir, of the Commissioners on the Subject of the Imprisonment of Europeans would apply rather to the regulating such Imprisonment than furnish any Reason for vesting the Government with a Power so terrible as that which the 43d and 44th Sections seek to confer.

I know of no such "physical Difference" which should in any degree entitle such Provisions to be passed.

I have now, Sir, concluded my Observations on these Two important Clauses, and I will pass from their Consideration with this Remark, that the Reasoning of the Commissioners in support of them is in no respect satisfactory to my Mind.

The 45th and 46th Clauses call for no Observations; the 47th has been already alluded to; and the 48th requires no Comment.

The 49th Clause appears, Sir, to me objectionable, and open to the following Observations. If the Party's remaining in the Country be inconsistent with the Safety of others, let him be removed, but do not take away the obvious Means of making him a good Citizen by interfering with the Fruits of his own Industry. Either the Law would be acted upon or remain a dead Letter. If attempted to be enforced, you would hold out an Encouragement to Fraud and Deceit, and the Consequence I allude to would flow from it. On the other hand, if the Law were neglected it had better be abolished.

I now,

I now, Sir, approach the 50th Clause, which is open to serious Objection.

It never can be right to arm Tribunals with unlimited Power of Fine, for it is a Principle most dangerous to leave the Punishment of Crimes to those who are invested with Authority. The Passions might interfere in a Business which ought to be regulated only by Law.

The Law Commissioners appear to be aware of the many serious Objections which may be offered against such a Clause, and in Page 6 of their Notes they observe, that it will be seen that in Cases which are not of a heinous Nature they purpose to limit the Amount of Fine which the Courts may impose.

Yet, Sir, I confess I do not find any such Limitation. I find, it is true, in particular Instances, that the Fine is not to be more than a certain Amount; but excepting these, the 50th Clause is left to cover the whole Code.

Unquestionably, Sir, it is impossible in every Case to regulate the Amount of Fine; but it is a Matter of real Interest to the Community that such a Discretion should not be entrusted to any One, and therefore, Sir, the Language of the "*Bill of Rights*," and I may also add, the express Provision of "*Magna Charta*," are not "mere idle Words," but are Expressions which, in England, have actually regulated and controlled such Discretion; in fact, they prevent a Man from being ruined by expressly requiring that Fines should be reasonable.

And now, Sir, the Line of Decisions founded on such Statutes has raised a Body of Law in England which controls the Power of the Judges to abuse it.

The 51st to the 57th Clauses inclusive call for no Remarks.

On the 58th Clause I will only observe, that although founded on natural Justice, it might have been omitted, for to make up the greater, the lesser Offence, so far as the Illustration to this Clause is concerned, must necessarily be included.

The 59th Clause I need not notice; but the 60th is open to the Observations I have made on the 58th.

Passing over the 61st Clause, I proceed, Sir, to examine the Chapter of General Exceptions, and my Attention is fixed by the very First, the 62d Clause.

I think it One of the worst in the whole Code. It is open to the most serious Objections.

The Impropriety, Sir, of this Attempt to exempt Individuals from Punishment who do Acts which they imagine are in accordance with Law may be placed in a clearer Point of View by considering why it is that in Criminal Matters Ignorance of the Law is not allowed as an Excuse. Before, Sir, I proceed, indulge me for One Moment, while I observe, that the Rule I speak of is not a Rule laid down by *mere Lawyers*, but one founded on the most obvious Reflections and the highest Humanity.

The Right, Sir, to punish is not founded on any abstracted Notions, as some Men imagine. It is public Necessity, and Necessity alone, that justifies the Application of the Rule I speak of. Unapplied, the very Foundations of Society would break up, and it is from a very confined Consideration of the Subject that the 62d Clause is sought to be applied.

But, Sir, let us go a little deeper, and let us see how, if Ignorance of Law were an Excuse, Society could continue. If the Principle I am combating were to operate, before you could render a Man subject to the Law you must show his Knowledge of it, which, as a public Principle, would be impossible to be carried into effect, because in nearly every Instance you would fail in showing such to be the Case.

To Men, Sir, who do not reflect, it appears a Matter of extreme Hardship to render Persons subject to Laws with which they are unacquainted. The smallest Consideration shows that no other Principle could possibly be supported.

What, therefore, Sir, is the Reason, why the Roman, the English, and, indeed the Laws of all modern Nations, apply such a Rule? The Answer is, obvious *Necessity*, and Necessity alone; for it never would do to allow an Excuse to be made for doing Acts which have a Tendency to break up the Foundations of Society by any Want of Knowledge that such Acts were either unauthorized or unpunished by Law. Mistakes on Fact, Sir, rest upon quite a different Principle.

It seems to be, Sir, that no other Doctrine can possibly be maintained, Hundreds of Acts are done by the State, not defensible in themselves, with

reference to the Individuals to whom the Laws are applied. It is the Necessity of the Case that authorizes the Enactment of the general Law. In such Cases what appears Harshness or Cruelty to the Individual is in good Truth Mercy to the many. It is the absolute Necessity of defending the Public that authorizes the Punishment.

If the Principle maintained in the 62d Clause were to become the Law of the Land, what Enormity is there, Sir, that might not be defended under it?

My Objections to this Clause will in no degree interfere with the solemn Duty of the Government to give the utmost Publicity to the Laws themselves.

The Observations I have above made apply equally to the 63d Clause.

The 64th to the 68th Clauses require no Remarks.

The 69th and 70th Clauses would secure Impunity to every Quack in the Country, and are a Burlesque on Legislation.

I am fearful, Sir, of the Provisions in the 71st Clause, for the Language is so plain that no Illustrations could control it; and although no immediate Objection occurs to my Mind, I am doubtful of its Propriety.

I would apply the above Observation to the 72d Clause.

Omitting altogether the 73d Clause would have been better than leaving it with such a Qualification as "ordinary Sense and Temper." I now, Sir, approach the Section on "The Right of private Defence." The Subject is important, most difficult, and deserving of the greatest Attention.

The leading Error, if I may venture to say so, and I speak it with real Diffidence, that runs through this Section, is the Want of Attention to a Principle of the utmost Importance, and which should always be kept in view in legislating on such Subjects; I mean of what may be done in a State of Nature, and what is fitting to be done in a State of civil Society. This Distinction, Sir, is not only pointed out but examined by Puffendorff in his great Work, *De Jure Naturæ*, in Book the 2d, Chapter 5th, Sections 3, 4, 6, 7, and 8, and likewise in the same Author's small Treatise on the Duties of a Man and Citizen, Book the 1st, Chapter 5th, Sections 15 and 16, Pages 111 and 112, 3d Edition in French by Barbeyrac, published at Amsterdam in 1715.

This Distinction does not appear, as is remarked by Barbeyrac, to have been particularly kept in view by Grotius in considering this Subject.

Another Error, Sir, into which it appears to me the Commissioners have fallen, is in endeavouring to make Provisions applicable to all Cases, and in attempting to fix precisely to which of the Provisions or Clauses the Crime shall apply. This, Sir, I consider impossible, from the very Nature of the Subject, unless the first Principles of Justice be violated. All that the Legislature in such Matters can do is to mark the leading Gradations of Crime; and it must be left to the Tribunals who investigate the Offence to determine whether it falls under the higher or the lower Description of Crime.

The Right, Sir, of a Man to defend his Person against Assault or Injury is not a Law founded on positive Institutions, but is One founded on the Law of Nature, regulated, as I will admit with the Commissioners, by the Necessity of the Case. It may be assisted by municipal Institutions, but it derives its Authority from the Law I mention. So far our Way is clear; but how far Strangers may interfere is a Question of greater Nicety. Undoubtedly, in Cases of manifest Outrage, which have a Tendency to break up the Foundations of Society, or which show a violent Disregard of all social Engagements, such Interference would be alike justified by Reason and Humanity. The Objection I am making to this Section will not appear so prominently, on considering the 74th Clause, as it will when I come to the 80th Clause, because under this 74th Clause the Right of personal Defence is regulated by the last Paragraph of the 75th Clause.

It must, Sir, as I think, be ever impossible precisely to define the Limits where a just Defence ends and where Injustice begins. The Subject does not admit of Definition, but must necessarily depend on the Circumstances of each particular Case.

The Cases of inflicting Death under the 74th and 79th Clauses are regulated by the Necessity of the Case; but I am fearful of such a Principle being applied under the 80th Clause to the Property defended.

By

By this Clause, taking along with it the Qualification in the last Paragraph of the 75th Clause, any Injury short of Death may be inflicted on the Wrong-doer.

This Enactment appears to me, Sir, of a very dangerous Nature; for if the Right of inflicting Injury be dependent on protecting the Property, many Instances might be taken from the Chapter on Mischief and other Places in this Code where such a Principle would not only be cruel, but repugnant to every Principle of Justice, and would in fact confound the Boundaries of Crime and Punishment.

If, Sir, the Application of such a Principle were unjust with reference to the Party himself defending, it would apply still more strongly against vesting Strangers with any such Right of Interference.

I much doubt, Sir, whether a Power so extensive as that which the 80th Clause seeks to confer on others should even be given to the Owner of the Property himself. The Right, Sir, of a Man to defend his Person or Property may, as a general Rule, be readily acknowledged. It is in the Exercise of that Right that the Difficulty arises, and what in one Instance may be its legitimate Exercise may in another be a Violation of the very Principle on which the Right itself is founded.

It is, as it appears, Sir, to me, the Justice of applying the general Right of Defence, rather than defending the Property itself, that ought to regulate the Right, and this, as I have above observed, appears to me ever incapable of precise Definition.

The Subject, however, Sir, is by no means free from Difficulty; and I am afraid that nothing more can be done than for the Legislature to mark the leading Gradations of Crime, leaving it for the Tribunals to determine whether the Act falls under one or another.

Something, Sir, like a Smile comes over me, when I turn to Page 19 of the Notes in this Code, and find the Commissioners claiming Merit for the "Care and Diligence," and the Moments of "anxious Thought," they have bestowed on this Section.

The following Authorities will be a sufficient Tribute for me to pay to both :- Grotius on War and Peace, Book the 2d, Chapter 1st, Sections 5, 6, and 7; Puffendorff, De Jure Naturæ, Book 2d, Chapter 5th, Sections 4, 5, 6, 7, 8, 9, 10, and 11 inclusive; Puffendorff on the Duties of a Man and Citizen, Amsterdam Edition, A.D. 1715 (above referred to), Book 1st, Chapter 5th, Sections 21, 22, 23, 28, and 29.

The Chapter on Abetment is, Sir, One of extensive Application. I pass at once to the 88th Clause. I am, Sir, not prepared to think that, as a general Principle, equal Punishment should be awarded to the Man who abets an Offence committed as is applied to the Party committing. The general Interests of Society appear to me to require that exemplary Punishment should be awarded to those who actually commit the Offence. Objecting to the Principle of this Clause, I may pass over the 90th, 91st, and 93d, though I think many Instances could be selected from the Code of *these even* operating very severely.

Next in Order, Sir, comes the 94th Clause; and this, with the 88th Clause, is most objectionable. Abundant Instances might, Sir, be selected from the Chapters of Mischief, Assault, and Trespass to show that this 94th Clause would confound all the Boundaries of Crime and Punishment; but I shall have frequent Opportunities, in my coming Remarks, to illustrate my Observations by referring to it, and I will content myself with stating, that if a Clause like the 94th were allowed to remain in any Code it would in its Operation alike violate every Principle of Justice and Humanity. It is a most insidious Clause, and capable of the most dangerous Application.

My Remarks on the 88th Clause apply also to the 95th, 97th, and 98th Clauses. Nothing occurs to me on the 99th Clause. The Punishment affixed to those coming under the 100th Clause is unquestionably just. The Party committing an Offence falling under such Illustrations as A and B undoubtedly should receive the same Punishment as if the Offence in either Instance had been committed by another in the full Possession of his Intellect.

This Admission, however, Sir, will in no respect interfere with the Principle of my Objection to the 88th Clause; for here the Act done comes not properly

under the Head of Abetment, for in plain Truth, in the Two Illustrations I allude to, it is A who commits the Offence himself.

I am fearful of the general Words of the 101st Clause. No doubt in many Cases, and especially in the Case of the Illustration, the Punishment would be just; but many Cases might be put where, under the plain Words of the Clause, it might not only be unjust but even ludicrous to punish the Party.

The above Observations apply to some of the remaining Clauses; and I will close my Remarks on this Chapter with this Observation, that the continued Attempt at Minuteness of Specification which runs through this Code is not one of the least of its Defects. The Rules laid down in criminal Matters should be few, general, and simple.

I now, Sir, commence my Examination of the Chapter entitled "Offences against the State."

On the 109th and 110th Clauses I need make no Comments, for every GOVERNMENT must punish Rebellion. The 111th Clause need not detain me. I have now, Sir, to attend to the 113th Clause, on which, with the Explanation annexed, I have some Remarks to make.

Let them not be deemed presumptuous. Let them be weighed with Candour!

And first, Sir, I think that as a mere Matter of public Policy every Government should avoid punishing Words unless such be accompanied by Acts injurious to the Interests of the State. But this Clause does not only apply to Words, but is, in fact, a direct Attack upon the public Press. The Expression "as is compatible with a Disposition to render Obedience," which is the Qualification of the Clause, appears to me of a very dangerous Tendency, and calculated to place Men's Rights and Liberties in the Discretion of each particular Judge, such Discretion necessarily varying with the Habits and Opinions of the Man. I think, Sir, such Enactments of a most dangerous Nature. With regard to mere Words, surely such, Sir, ought never to be visited with Punishment, unless accompanied, as I have said, with Acts detrimental to the State.

But, Sir, if this be intended as one Means of putting down the Press, surely it is a wrong Means in pursuit of an End. It would be better, far better, Sir, for the Interests of the Community, rather than such Provisions should be carried into effect, that a Censorship should be at once established.

I say it is a wrong Means of effecting an End, because if it is considered that the Existence of a free Press in India be inconsistent with the Nature of the Government or the Stability of British Rule, act boldly, and put it down at once. Half Measures in difficult Emergencies commonly fail; a bold and decided Line of Conduct is generally the best.

How far such an Act would be a Crime against the common Interests of Mankind is not for me to determine.

My Objections, Sir, to the above Clause, coupled with its Explanation, are founded on the Injustice of inflicting such severe Punishments, and on the Impropriety of investing Men with a discretionary Power of determining how far the Acts done are compatible with a Disposition to render Obedience.

No Government, Sir, should vest such a discretionary Power in any Man, because it is liable to be abused. The Law of Discretion (said a great and learned Judge) is the Law of Tyrants, and holds no Place where Justice or Humanity prevails.

Here too, Sir, observe how the 44th Clause of the Chapter on Punishments, and the 88th and 94th Clauses in the Abetment Chapter, come into operation.

While, Sir, on this Subject, I may as well dispose of the remaining Clauses, which affect the Press. They are contained in Chapter XVII., Clauses 291, 292, and 293; and first of all my Attention, Sir, is drawn to Note L at Page 52 of their Notes. There the Commissioners inform us that the Penal Provisions contained in the above Chapter are taken from Regulation XI. of 1835, commonly called Metcalfe's Act. This, Sir, has a Tendency to mislead, for it creates a Belief that the Punishments are the same. If, Sir, we turn to the Regulation, we shall find that the Enactments in the 291st, 292d, and 293d Clauses are nearly verbatim. The same with the Regulation itself; but there the Similitude ends; for if Two Years Imprisonment be adjudged against an Offender, the 44th Clause, if he be an European, or a Person not both of Asiatic Birth and Asiatic Blood, may banish him the Territories of the East India Company. This, Sir, seems to me calculated to lead the public into Error.

The

The 114th and 115th Clauses require no Comments. Next in Order, Sir, comes the Chapter on "Offences relating to the Army and Navy."

On the 116th and 117th Clauses I have only to observe, that the Punishments affixed seem very severe; indeed, great Part of the Code is open to this Objection. It is true that so far as Capital Punishments are concerned the Code is lenient, but on the other hand, Imprisonment, unlimited Fine, Banishment, and Transportation, are scattered through its Provisions with a most liberal Hand.

The 118th and 119th Clauses also require Observation. The Punishment affixed is extremely severe, and no Distinction is taken between Assaults committed on Officers or Persons in the Execution of their Duty and those committed upon them when off Duty. A very important Distinction, as it appears to me.

Neither is it at all pointed out whether such Assaults are intended to prejudice the Service of the State, or whether they merely arise from the hasty Acts of Individuals. But in any View the Punishments are too severe.

On the 120th Clause little occurs, except that the 44th, 47th, and 50th Clauses might be called into operation.

The 121st Clause appears to me, Sir, to confound all Proportions of Punishment and all Distinctions of Crime. The 120th and 121st Clauses in the Acts of the Parties are identically the same; yet in the one Case the Man is imprisoned for a Year, with unlimited Fine, and in the other, if "not of Asiatic Birth" and Blood," the Government may banish him for Life, and a Fine to the Amount of his whole Fortune may be likewise inflicted.

These Observations are made on the Supposition that the Court acts not under the 47th Clause.

I well know, Sir, that the Consequences to Society enter into the Consideration of what is a fitting Amount of Punishment; but such is not the only Consideration that should be taken into account, and the Injustice and Inequality of such Punishments are open to the plainest Observation. The remaining Clauses in this Chapter call for no Notice.

I now proceed, Sir, to offer a few Observations on Clause 127, of "Offences against public Tranquillity," and I find that an Assembly of Twelve or more Persons is to be designated as a riotous Assembly, if that Assembly be attended with Circumstances which may reasonably excite Apprehension that its Object is one of those specified in the Body of the Clause. The Punishment for such is Six Months Imprisonment, or Fine, or both.

Surely such a Qualification, Sir, as "reasonably exciting Apprehension" is hardly a fit Expression to find its Way into any Body of Law. In fact it allows the Opinion of each particular Judge, as I have before observed, to be his Rule of Action, and is in effect placing the Public at his Mercy.

With regard to the 130th Clause, I may merely remark that a Punishment of Two Years, or Fine, or both, for a Man joining or continuing in a riotous Assembly after such Assembly has been ordered to disperse, is a Punishment beyond the Measure of the Offence. The same Observation applies to the general Language of the 132d Clause. The Enactment contained in the 133d Clause I protest against; nor can I see on what possible Principle it can be supported. It is painful, Sir, for me even to comment on such fearful Enactments; yet this is a Code where the Commissioners conceive they have erred on the Side of Humanity. Let me see, Sir, whether such an Enactment can bear even its mere Statement. A Riot is committed by 500 People, for the Purpose of annoying some Person, and during the Continuance of such Riot One of the Rioters kills another under Circumstances amounting to Murder. Can it be maintained for One Moment that the 498 remaining Rioters are each to be liable to Five Years Imprisonment, with unlimited Fine? To my Ears the bare Statement of such a Proposition would sound strange. I can reconcile it with no Principle of Justice or Humanity.

Here, too, Sir, I may observe, that the 91th Abetment Clause comes into curious Operation; and it might be a Matter of Amusement to apply the 88th and the 94th Clauses to the respective Provisions of this Chapter.

The 135th Clause requires no Remark.

The 136th Clause is rather curious. In good Truth it is a Contingency contingent on a Contingency, and Likelihoods, May-bes, and Possibilities fill up the Enactments.

These, Sir, are the Reflections which have occurred to my Mind on the above Chapters. I submit them to the Consideration of Government, and beg leave at the same Time most respectfully to subscribe myself your Honour's

Most obedient, &c.

(Signed) JOHN COCHRANE,
Standing Council.

No. 101.

T. H. MADDOCK Esq. to J. COCHRANE Esq.
(Legislative Department, No. 247.)

Sir,

Fort William, 23d July 1838.

I AM directed by the Honourable the President in Council to acknowledge the Receipt of your Address of the 9th instant, containing your Observations on the proposed Criminal Code, and to return you his sincere Thanks for the Labour and Attention which you have devoted to the Subject, and which will meet with full Consideration.

2. His Honour in Council will be happy to be favoured with your further Remarks on other Parts of the Code not touched upon in your present Communication.

I have, &c.

(Signed) T. H. MADDOCK,
Officiating Secretary to Government
of India.

No. 102.

The Reverend W. MORTON to R. D. MANGLES Esq.

Sir,

I HAVE in charge from the Body of the Calcutta Missionaries of the various Societies to forward to your Address the accompanying Communication, with their respectful Request that it may be laid in due Course before the Legislative Council. It has been got up with much Deliberation, carefully weighed in all its Clauses, and bears the Signatures of all the Members of the Missionary Union, as well as of others not resident in Calcutta, *One* Dissenting Missionary only excepted, who abstains on Principle from *all* Communications with Civil Government, though cordially assenting to the Purport of the enclosed, which has his best Wishes for its Success.

I have, &c.

(Signed) WM. MORTON,
Missionary, L. M. S.

Enclosure in No. 102.

MISSIONARIES of the ESTABLISHMENT and DISSENTING BODIES to R. D. MANGLES Esq.

Sir,

THE Missionaries of various Protestant Societies, both of the Establishment and Dissenting Bodies, labouring in Calcutta and its Vicinity, having met to take into consideration the apprehended Bearing upon their Security and future Operations of sundry Enactments in Chapter XV. of the new Penal Code prepared by the Indian Law Commissioners, are unanimously of opinion that a due Regard for the sacred Interests which they are permitted to subserve renders imperative upon them a respectful Expression to the Legislative Council of their Views and Apprehensions thereupon.

2. They conceive themselves to be strictly within the Line of Duty in adopting a corresponding Resolution. The Publication of the proposed Code, previously to its receiving the Sanction of the Legislative Council, having been with the view of engaging the Inquiries and drawing forth the Judgment of the different Classes of the Community, and none of those Classes having a more vital Interest in the Bearing of all Enactments on the Subject of religious Offences than the Missionaries, it will not be deemed in anywise unbecoming or presumptuous in them to communicate, with all due Respect, the Apprehensions they entertain as to the Operation of the proposed Laws upon their future Proceedings.

3. They beg, therefore, to submit the following Observations to the equitable and mature Consideration of the Legislative Council; a Consideration which they have every Confidence

Confidence will be given to them. Of this, indeed, they have a sufficient Pledge and Guarantee in the present Publication of the Code, and Submission of its Enactments to general Discussion and Animadversion, previously to their receiving the Sanction of Law, than which no Course more candid or liberal can be conceived, or more becoming a wise and paternal Government to adopt.

4. The Missionaries most respectfully submit, then, in the first place, that nothing in the past History of Missionary Operations in India can, they are persuaded, be alleged of a Nature to call for such extensive cautionary Enactments as are some of those in Chapter XV. of the new Penal Code. In all Confidence and good Faith, they make their Appeal to every authentic Record in support of the Assertion that no accredited Missionary of any of the Protestant Bodies has ever been the Occasion of civil Commotion, or has at any Time adopted a Line of Procedure either wilfully devised or justly calculated to insult the religious Feelings of any Class of the Natives of India, nor even, out of the Range of fair and equitable Discussion,—a Discussion to which the proposed Code declares it the Intention of its Compilers “to allow all fair Latitude,”—to wound those Feelings in anywise.

5. If they are correct in this Assertion, then the passing of Laws such as those in question, which carry in their very Announcement a contrary Impression, must certainly have the Effect of injuring the Missionaries in the Opinion of the Natives among whom they labour, in the Communication of religious Truth, by exciting a Suspicion, which, however ill supported in Fact, will, from the very Position and Feeling of the Natives as the Objects of Missionary Effort, obtain a ready Lodgment in their Minds, and tend greatly to augment the Difficulties, already too largely experienced, in propagating amongst them the peaceful and purifying Truths of our Divine Faith.

6. If, as Note J in Chapter XV. of the new Code allows, “Discussion tends to elicit Truth,” then whatever operates to limit and shackle legitimate and fair Discussion is an Injury done to Truth, and can never be the intentional Object of sound Legislation. “Insults,” it is readily acknowledged, “have no such Tendency,” and may therefore and ought to be prohibited; but if the Feelings of the weaker, *i.e.*, the losing Party in a Discussion, conducted though it may be upon the most equitable Terms, be admitted to decide, then Arguments the purest and the most moderately expressed will certainly always be deemed wounding; nay, they will be regarded as insults, and may even be represented to be designed insults, by simply showing that their wounding Tendency must not only have been perceived but anticipated as unavoidable by him who presses them, while yet in Truth they are the only rational and moral Means furnished by our common Creator of opening the Understanding and leading to Reflection. Even Sarcasm itself is often the only Answer that can be given to Positions too absurd to be gravely argued.

7. In this View the Missionaries consider Clause 282 of Chapter XV. of the Code specially calculated to operate injuriously to themselves and disastrously on the Spread of Divine Truth. Deliberate and wilful Intention will surely be as strenuously, and honestly, too, disclaimed by the zealous Missionary, as it will be attributed to him by those who deem their religious Feelings wounded or insulted when their Understandings are simply reasoned with. If it be establishable at all it can only be by Inference; but Inference may be variously drawn from the very same overt Acts, according to the Light in which they are beheld by the Adjudicators; so “any Word or Sound” will include all Discussion or Announcement whatever; “any Gesture,” all ordinary Animation in the Advocate of Truths the most interesting. Assuredly, if tried by these Rules, there is not a Discourse or Expostulation of Prophet or Evangelist in the New or the Old Testament, nay, not of our Divine Saviour himself, which would not be thought to wound and keenly to wound the Feelings of a zealous Jew, Mussulman, or Idolator, and which, if so, must not be held forbidden under the new Code to be either recited or imitated in the Discourses of the Missionaries.

8. Truth not only implies the Falsity of what it opposes, but involves, as necessary for its Exhibition, Illustration, and Enforcement, a distinct Exposure of such special Errors as are at any Time the Hindrance to its Reception. But all Men are more or less attached to their Opinions, and ever most strongly so when these are the Prejudices of Education or the Dictates of Superstition, and when the Abandonment of them may involve a Change, possibly of social Usages, a Forfeiture of the Credit of Caste, or a Relinquishment of any other half-civil, half-religious Distinction whatever. The more an Error is absurd, too, or immoral, or profane, the more offensive is its Exposure to those who entertain it, and the more, consequently, they will deem their Feelings wounded; nay, themselves being Judges, insulted by that Exposure, however fairly and legitimately made.

9. It is evident, therefore, that a People eminently superstitious as are the Hindoos would be additionally moved to the Indulgence of a Propensity to Litigation by the Impetus of a cherished Superstition (and Superstition is always strong, unhappily, in the very Proportion of its Monstrosity). What an Inlet, then, to an incessant Imputation of “deliberate and wilful Intention to wound or insult the Feelings of Hindoos,” would be opened by the passing of Clause 282 of Chapter XV.? A fortiori may this be said in

the Case of Mussulmans, a fiercer and more vindictive People, proud of a supposed Superiority, and possessed with a rancorous Hatred of and Contempt for Christianity. Justly may it be apprehended that the passing of Clause 282 into a Law would ere long prove a prolific Source of vexatious Law Suits, at once harassing to the most unoffending Missionary, and largely adding to the Burden of Business in the Courts.

10. If due Attention be given to Facts of daily Occurrence, it will be seen that the great Body of those Natives of this Country with whom the Missionaries come in contact do not evidence any Consciousness whatever of "Feelings wounded" by the Address of the Missionaries. The fair Inference is, that the general Procedure and Habit of the Missionaries is felt (as it is indeed admitted) to be fair, moderate, and discreet,—not liable to any just Exception. Occasional Instances of individual Sensitiveness do indeed occur, but these are, as could easily be shown, not so much the direct Consequence of Missionary Addresses, as the spontaneous Exhibition of personal Petulance, Vanity, or antecedent Enmity to Christianity in rare Individuals. In a vast Majority, too, if not nearly the entire of the Instances of excited Discussion that may in these Cases have at Times taken place, the Native Disputant has been the Aggressor. The Quarrel is not, what the Missionary has brought forward, but with what he has not touched; and this is gratuitously put forth, in the Shape, usually, of most abusive and unreasoned Objections to and Imputations on Christianity and its Divine Founder, and that within the Premises of the Missionary thus assailed in his own Tenement.

11. But whilst an Individual here and there thus puts himself forward as an Assailant, the Body of the Natives are found to hail the Missionaries as Benefactors, urgently requesting them to renew their Visits, to establish Schools for their Children, nay, oppressing them with Solicitations for Tracts, and even placing such Confidence in their Prudence and Disinterestedness as to make them the Arbiters of their mutual Disputes, their Patrons and Advisers. The eminent Services of a Schwartz are imperishably inscribed on the Records of the Indian Government, and the grateful Recollections of the People still hallow his venerated Memory; nor is it yet forgotten that to the advantageous Adjustment of the Treaty which terminated the Burmese War the Acquirements and Influence of the Missionary Judson eminently contributed. With all Confidence it is presumed that, wherever a Protestant Mission of any Standing exists, similar Advantages would proportionally to Circumstances be derivable to a paternal British Government from the Influence of Missionary Character, founded as, under God, that Influence is, on a Conviction in the Native Mind of the Honesty of Purpose and the Integrity of Life of their Christian Teachers; nor ought it to be overlooked that Obedience to Rulers and Peacefulness of Conduct is ever a prominent Point in Missionary Instruction.

12. In Clause 276 of Chapter XV. a similar Inlet to that before remarked upon is opened for a litigious Zeal to expend itself in vexatious Accusation of the Missionary who should, as heretofore, deem it his Duty to address the Natives of this Country at *Melas* and other Places of Resort for religious Observances, such as Juggernath, Gunges Suga, &c. He may, as now, but quietly commence the reading of an inoffensive Tract, and when Curiosity or some other Motive has gathered around him a small Number of Persons, may proceed to proclaim the Message of the Gospel of God our Saviour, and thereby become liable to what hitherto he was not, an Accusation of "wilfully causing Disturbance to an Assembly lawfully engaged in the Performance of Religious Worship;" an Accusation to which no other Prompting, it is feared, would be required than that of individual Over-zeal or disappointed Gain in a Brahmin, or Devotee, or a Zany.

13. So, too, by Clause 278, might the most legitimate Act be misconstrued into "wilfully causing Disturbance in a Place of Worship," &c., though in truth such Disturbance should have proceeded altogether from the Aggressions of the accusing Party. To provoke, if possible, and irritate the Missionary, is the First Effort of such gratuitous Opponents as have been referred to. Rarely are Arguments fairly met, or honestly discussed; for not to reason, but either to silence or divert Discussion, to disturb the Promulgation of Truth or weaken the Influence of the Missionary by moving him from his Calmness and Self-possession, is the Point aimed at. It is unquestionably, therefore, to be presumed that Clauses 278 and 282, if once made Law, would but serve to stir up into a Flame the now harmless because latent Heat of personal Opposition, and greatly to impede the future calm and fair Discussion of Truth and Error, in the Spirit of Candour and Forbearance. In Discussions so conducted alone are the Missionaries it is believed prone to indulge; and rarely has it happened that they have failed to secure the Suffrages of the great Body of their Auditors, even when the most sharply opposed by individual Petulance.

14. Nor ought it to pass unobserved, that the most marked Cases of Opposition in Argument that have occurred, in the Experience of the Calcutta Missionaries in particular, are those in which, not the Influence of *Native* Superstition operates, but that of a wide-spread Infidelity and Scepticism as to all Religion and every Mode of Divine Worship, emanating from the now numerous Schools and Colleges, in which Knowledge, which is power, for either Good or Evil, as directed, is communicated without the Guide and Check of moral Principle. The Pride of Intellect, the more towering from Inexperience of its

Exercise,

Exercise, and the more impatient of all Control from the Novelty of its Emancipation from old Superstitions, might not, it is apprehended, scruple to avail itself, in its Contempt of Christianity, of the sanctioned Plea "of wounded Feelings" that never existed, in order to repress and punish an Individual whose Reasoning could better be checked by Fine, Imprisonment, and Banishment than met by logical Argument and fair Discussion. Experience has warned the Missionaries that this is no visionary Apprehension.

15. Nor are the Missionaries without Sympathy with their Fellow Labourers under neighbouring Native Governments, as of the Burman Monarch. In these are many zealous Christian Missionaries, endeavouring, with more or less Experience of a Toleration always precarious, to discharge the high and solemn Duty imposed upon them by the Command of the God of the whole Earth, their Security in great measure depending on the Influence of the Acts and Procedure of the British Indian Government. Should this then set the Example of legislating for Missionary Effort, either so as directly to limit and confine its Range, or to open up Facilities for its future Limitation, creating Offences not hitherto existing, and establishing severe Penalties upon their real or inferential Commission, it is to be justly apprehended that such Example could not fail to lead to Consequences under Native Governments most disastrous for the Time, if not such as entirely to break up the Missions, to endanger the Lives or Liberty of the Missionaries, and even to put out the Light of Truth yet feeble among those who sit in Darkness. The Missionaries feel themselves warranted in entertaining such Anticipations, not from their own Deductions merely, but from the Communications of one of the zealous Individuals actually circumstanced as detailed, now in Calcutta. The Services of the Missionary Judson, already spoken of, present, it is thought, a strong Claim on the Government of British India for all fitting Regard to the Safety of his Brethren and Successors.

16. Reflecting Men, nowise disposed to unnecessary Despondency, are not without serious Apprehension that the Operation of Chapter XV. of the new Code would, possibly at no distant Period subsequently to its passing into Law, be to silence by Imprisonment or Banishment some and injuriously to cramp the Efforts of others of the Missionaries, hitherto secured in the free Exercise of their Divine Commission. That Apprehension is excited by the admitted Character for Litigiousness of the Natives of India, by the special Tendency of Superstition, wherever stimulated by the real or supposed Countenance of Law to oppose itself actively as well as passively to Truth in Religion and to its Teachers, the more markedly when that Truth is equally opposed to the Mistakes of the Head, the Vices of the Heart, and the allowed Practices of a demoralizing System, and when further strengthened by the immemorial Usages of Society, by the Prejudices of Caste, and, not least, by the Excitements of worldly Interest in One or more Classes of Men whose Respectability and Support are bound up with the hereditary Superstition, and whose Fears, augmenting with its Decline, must prompt them to Efforts progressively strenuous to crush under the Colour of Law those whose rational Arguments it is impotent to contend with.

17. On the whole, the Missionaries respectfully submit that the proposed Interference with Religious Discussion and Missionary Teaching, after so long Proof of their Inoffensiveness, must in many Cases largely operate alike injuriously to Truth and to its Advocates, and be attended with small Result of Advantage in any; that unvarying Experience *has* shown no Call for these Enactments; that the Character and Circumstances of the Natives and the Missionaries respectively render them every Way inexpedient; that Clauses 276 and 282 would furnish those least of all entitled to use them with Means for impeding the Progress of Truth, of Human Virtue, and Human Happiness; that either the entire expunging of those Clauses is called for by every equitable Consideration, or at least such large Modifications of them, as to the Definitions and Specialities of the new Offences, the providing of Checks upon an Abuse of their Intention, the Mode of prosecuting for them, the Tribunals at which they may be prosecuted, the Kind and Measure of Punishment that may be inflicted, and other relevant Particulars, as would render them harmless to all, conducive to Impartiality, not fatal to fair Discussion, unprovocative of Litigation, and not adverse to the Progress of mental and religious Enlightenment, of true Religion and of good Morals, among the Natives of India. As Points calling for more accurate Definition, they would instance the Terms "Places of Worship," whether Building, Enclosure, or open Space; for Specification, those of "wilfully or deliberately doing or causing," "wounding" or "insulting," Terms occurring in those Two Clauses, 276 and 282, to which they have ventured to take special Exception, and the latter of which at least, 282, they presume to hope the Reasons that have been adduced will have shown deserving to be entirely erased from the Penal Code.

18. The above the Missionaries offer most respectfully to the Notice and Consideration of the Legislative Council, confidently trusting that the Facilities hitherto secured by Charter for the Exertion of Christian Missionary Zeal, under the Guidance of Prudence and Discretion, will not now be lessened, concomitantly with the Extension of civil Privileges to all Classes of the Community, the Improvement of the Laws generally, the

increasing Speed of universal Knowledge, and the Amelioration so felicitously sought to be introduced into the Administration of the entire Government of this great and important Country.

We have, &c.

C. C. ARATVON, Baptist Missionary Society.
THOMAS BOAZ, London Missionary Society.
JAMES BRADBURY, London Missionary Society.
JNO. CAMPBELL, London Missionary Society.
DAVID EWART, Church of Scotland Mission.
JNO. D. ELLIS, Baptist Missionary Society.
M. HILL, London Miss. Society, Berhampore.
A. F. LACROIX, London Missionary Society.
THOS. L. LESSEL, London Missionary Society.
J. G. LINEKE, Church Missionary Society.
A. B. LISH, Baptist Missionary.
W. J. MACKAY, Church of Scotland's Mission.
J. MACDONALD, Church of Scotland's Mission.

J. M'EWEN, American Presbyterian Mission.
W. MORTON, London Missionary Society.
GEO. MUNDY, London Miss. Society, Chinsurah.
JOHN PATERSON, London Miss. Soc. Berhampore.
J. PENNY, Baptist Missionary Society.
C. PIFFARD, London Missionary Society.
R. DE RODT, Missionary.
W. ROBINSON, Baptist Missionary.
T. SANDYS, Church Missionary Society.
J. SYMES, Baptist Missionary.
J. THOMAS, Baptist Missionary Society.
G. PEARCE, Baptist Missionary Society.
FRED. WYBROW, Church Missionary Society.

No. 103.

R. D. MANGLES Esq. to the Reverend W. MORTON.

(Legislative Department, No. 123.)

Sir,

Fort William, 2d April 1842.

I AM directed by the Honourable the President in Council to acknowledge the Receipt, on the 24th ultimo, of your Letter without Date, giving Cover to a Communication from "the Missionaries of various Protestant Societies, both of the Establishment and Dissenting Bodies, labouring in Calcutta and its Vicinity," relative to "the apprehended Bearing upon their Security and future Operations of sundry Enactments in Chapter XV. of the new Penal Code, prepared by the Indian Law Commissioners," and to request that you will inform the Reverend Gentlemen whose Signatures are attached thereto that their Representation will receive the most attentive Consideration of the Legislative Council in their Deliberations on the proposed Penal Code.

I am, &c.

(Signed) R. D. MANGLES,
Secretary to the Government
of India.

No. 104.

Major W. H. SLEEMAN to J. P. GRANT Esq.

Sir,

Moradabad, Office of the Commissioners
of Thuggee and Dacoitee, 18th February 1840.

I HAVE the Honour to return the Copy of the Penal Code which you did me the Favour to forward with your Letter of the 2d September last, with such Observations and Suggestions as I have ventured to make upon its Contents after several very careful Readings.

2. I have been so much occupied with current and pressing Duties that I have not till lately had Time to give the Code that Consideration which seemed to me necessary to authorize me to make any Observations upon its Provisions. This will, I trust, plead my Excuse for detaining the Book so long.

3. I have read the Code over several Times very carefully, and can honestly say that at every Reading it has grown more and more upon my Esteem. I am persuaded that it might be put immediately in force with great Advantage to the People of India, and that it would soon become all that could be desired, under the fostering Care of the Legislative Council and Law Commission, in the Manner pointed out in the 25th Paragraph of the Letter of the Law Commission to the Governor General of India.

4. I have ventured to suggest a good many Alterations and Additions, where they appear to me likely to be useful; and I think it better to return the Volume, in which these Suggestions have been entered in their proper Places, than to give them all in a Letter or separate Paper with References and Quotations.

5. It should, I think, be declared, that Fines are imposed for, 1st, Restitution of Property taken; 2d, Reparation for Injuries sustained; 3d, Compensation for Losses occasioned; 4th, the Prevention of Offences; and that it should rest with the Court to decide the Character of the Fine and appropriate the Amount. Should this be done, it would be necessary to modify the Clauses which prescribe the Period of Confinement in default of Payment. It appears very unreasonable to the People of India, and I believe to all other People, that the Law should allow a Criminal to keep what he has got fraudulently, or oblige him to give it to the Government instead of the Person wronged.

6. There is one Part of the Code on which I would venture particularly to remark; its not considering Adultery and Seduction Penal Offences. The Reasons assigned by the Law Commission in the Notes appear to me very unsatisfactory, and they will I think appear so to the People of India. It is said that People have not been found to apply to the Court for Redress; but that arises from the utter Hopelessness on their Part of ever getting a Conviction in our Courts upon any Evidences that such Cases admit of. The Mahomedan Law on this Point is known to have been made by Mahomed on the Occasion of his favourite Wife Aesha, the Daughter of his Bosom Friend and Successor, Aboobukeer, being found under very suspicious Circumstances; and it demands that Four Witnesses shall depose to having seen the Man and the Woman both in the very Act of Adultery; and that if no more than Three swear to it, these Three shall suffer the Punishment to which the Accused would have been liable had the Fourth sworn, that is, Eighty Stripes, almost equal to a Sentence of Death.

7. Omur, who succeeded Aboobukeer, had to sit in Judgment upon his own Son, charged with Adultery. Three Men had by a singular Accident, which is described by Abol Feda, seen him in the Act, and they swore to it. No Brutus was ever more inflexible than Omur in the Administration of the Law according to his Code, and had the Fourth Man appeared his Son would have suffered. He did not appear, and the Three Witnesses suffered. This Case in point has settled the Law of Evidence in such Matters; and no Mahomedan Law Officer would, I believe, dare to give a Verdict of Guilty with less than Four.

8. The rich Man not only feels the Assurance that he could not get a Conviction, but dreads the Disgrace of appearing publicly, in one Court after another, to prove, by numerous Witnesses, Male and Female, his own Shame and his Wife's Dishonour. He has recourse to Poison secretly, or with his Wife's Consent, and she will generally rather take it than be turned out into the Streets a degraded Outcast. The Seducer escapes with Impunity. He suffers nothing; while his poor Victim suffers all that Human Nature is capable of enduring. Many Instances of this have come within my own Knowledge. The Silence of the Penal Code will give still greater Impunity to the Seducer, while their Victims will in Three Cases out of Four be murdered or driven to commit Suicide. Where Husbands are in the habit of poisoning their guilty Wives, from the Want of legal Means of Redress, they will sometimes poison those who are suspected upon insufficient Grounds, and the innocent will suffer.

9. At present I believe no Magistrate could hope to get a Conviction in a Court of Sessions against any Person charged with Adultery under Regulation XVII. of 1817, in One Case out of a Hundred that might take place in his District. His only Resource would be in Regulation VII. of 1819, which authorizes him to punish a Person convicted of enticing or taking away a Wife or unmarried Daughter for the Purpose of rendering her a Prostitute. But this Law, which provides for another Class (Pimps), can seldom be so strained as to reach this Class of Offender, the Seducer; and few Magistrates feel disposed so to strain it for the Purpose. That Men do not seek Redress in our Courts for the Seduction of their Wives and Daughters arises from the Defects of the Law, and these Defects may easily be remedied. It is an Error to suppose that the Natives of India want a heavier Sentence. All they want is a fair Chance of Conviction upon such reasonable Proof as the Case admits of, and such a Measure of Punishment as shall make it appear that their Rulers think the Crime a serious One, and are disposed to protect them from it.

Sometimes the poorest Persons will refuse pecuniary Compensations, but generally they will be glad to get what the Heads of their Caste or Circle of

Society may consider sufficient to defray the Expenses of a Second Marriage. They dare not live in Adultery; they would be Outcasts if they did; they must be married according to the Forms of their Caste; and it is reasonable that the Seducer of the Wife should be made to defray these Expenses for the injured Husband. The Rich will of course always refuse pecuniary Compensation; and for the same Reason that they would never prosecute the Seducer in a Civil Court. The Poor could never afford so to prosecute in such a Court; and, as I have said, the Silence of the Penal Code would be a solemn Pledge of Impunity to the guilty Seducer, under an efficient Government like ours, that can prevent the Husband and Father from revenging themselves, except upon the Females.

11. It is not, I conclude, intended to employ a Mahomedan Law Officer in the Administration of the new Penal Code; and if not, the Mahomedan Law of Evidence in such Cases would no longer be any Impediment to Conviction. The Clauses which I have ventured to suggest would, I think, be found to meet all the Exigencies of the Case, and prove highly satisfactory to the People.

12. They are as follow: 1st. "Every Man convicted of seducing the Wife or the unmarried Daughter of another shall be punished with Imprisonment of either Description for a Term which may extend to Five Years, or to Fine payable to the Husband or Father, or to both. In default of Payment of the Fine, the Offender shall be liable to a further Imprisonment of Two Years over and above the Period to which he may have been sentenced for the Offence.

"The Prisoner to be entitled to his Release at any Time, on an Application from the Husband or Father, as the Case may be."

2d. "Every married Woman convicted of Adultery shall be punished with Imprisonment of either Description for a Term which may extend to Two Years. The Prisoner to be entitled to her Release at any Time, on the Application of her Husband."

3d. "Every Husband whose Wife has been convicted of Adultery shall be entitled to a Divorce, on producing the Decree of the Court before the Court competent to grant Divorces."

13. I have ventured to suggest a Clause to protect Society from the insolent Importunity of able-bodied Beggars, who everywhere extort from People by Intimidation what they would otherwise be disposed to give to the suffering and needy around them from Feelings of Charity. Such sturdy and insolent Beggars are to be found in almost every Town in India, and there is hardly One in which the People are not every Day suffering from their Importunity.

14. I would not stop short at Clauses 356 and 357 with Kidnapping, but prohibit at once the Sale of Human Beings, and put an end to Slavery in India, for "Slavery is a bitter Draught," be it where it will. We know not the Cruelties inflicted upon Slaves in the Zenanas of great Families, from Female Hatred and Resentment. They are great and numerous within our own Territories, but infinitely greater in those of Native Chiefs connected with us in some Relation or other of Dependence. We every Day see the State to which Female Children are reduced in the Dancing Establishments of every Town, and we now know the horrid Crimes to which those who provide the great Families and the Dancing Establishments have recourse to get the Children of indigent Parents for such Markets. The only Way to put a stop to these Crimes effectually, is at once to put a stop to the Traffic in Children; to prohibit Slavery. I should therefore propose the following Declaration and Enactment:—

"Every Person born in the Honourable East India Company's Territories is born free. The Right of no Parents over their Children shall in those Territories extend to the disposing of them by Sale.

"Clause 357½. Whoever sells a Human Being, Male or Female, within those Territories, or offers One for Sale, shall be punished with rigorous Imprisonment for a Term which may extend to Seven Years and must not be less than Two, and shall also be liable to Fine.

"357¾. Whoever purchases a Human Being within those Territories shall be punished with rigorous Imprisonment for a Term which may extend to Five Years and must not be less than One, and shall also be liable to Fine."

"Whoever imports into these Territories or exports from them any Human Being for Sale shall be punished with a rigorous Imprisonment for a Term which

“which may extend to Seven Years and must not be less than Two, and shall also be liable to Fine.”

15. These Enactments would, without injuriously affecting any existing Right, effectually prevent in future the horrible Trade in Children which is now carried on in all Parts of India by the Hosts of Brinjarras which infest all those Parts where there are neither navigable Rivers nor Roads for wheeled Carriages, and the Grain of the Country is conveyed upon Bullocks Backs. They everywhere kidnap Children along the Districts through which they pass, and very often murder their indigent Parents as they pass along the Roads in search of Employment and Food from Districts suffering under Calamities of Season to others more favoured. During all such Seasons of Scarcity the starving Population are directed in their Search for Food and Employment by the Line of Brinjaree Bullocks bringing Grain from the more favoured Districts, and as they pass their Encampments they are induced to seek Shelter among them for their Children from the Wolves. When they do so the Parents are generally murdered, and the Children are taken off and sold as Slaves to Natives of Rank for their Zenannas, or to the Heads of Dancing Establishments for Prostitution.

16. I believe every Brinjara to be a Robber, though many of them may go whole Journeys without robbing, and that One of the greatest Blessings attending on the Formation of navigable Canals and good Roads for wheeled Carriages will be the relieving of the Population from the Necessity of being supplied by such a Class of People.

I have, &c.

(Signed) W. H. SLEEMAN,
Commissioner for the Suppression
of Thuggee and Dacoitee.

No. 105.

(No. 11.) Major W. H. SLEEMAN to J. P. GRANT Esq.

Sir,

Moradabad, 19th February 1840.

I HAVE the Honour to request that you will add the following Passage as a Postscript to my Letter of Yesterday:—“I propose that the Seducer shall be entitled to his Discharge, on the Application of the injured Husband, on the Ground that the Members of his Caste who know the Circumstances of the Seducer will consent to take less than the Court has awarded for the Expenses of a Second Marriage, when they find that he cannot pay all. The Husband who will take no Money will frequently desire the Release of the Seducer, as the only Means of saving his discarded Wife and the Mother of his Children from utter Destitution.

“The injured Father, too, will often desire the Release of the Seducer of his Daughter, as the only Means of saving her from utter Destitution, and will be able to secure Engagements for a permanent Provision for her from the Friends of her Seducer by procuring his Release.

“Many Cases of both Kinds have come before me in Court in the Districts of the Nerbudda; and I can venture to assure Government that the Clauses I have suggested to provide for them will be very satisfactory to the People of India.”

I have, &c.

(Signed) W. H. SLEEMAN,
Commissioner for the Suppression
of Thuggee and Dacoitee.

No. 106.

(No. 16.) Major W. H. SLEEMAN to J. P. GRANT Esq.

Sir,

Moradabad, General Superintendent's Office,
6th March 1840.

I HAVE the Honour to state that I should wish to have the following Passage added to my Letter to your Address of the 18th ultimo on the Subject of the Penal Code.

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2. "The Law Commission, I believe, found that Husbands were not in the habit of applying to our Courts for Redress against the Seducers of their Wives, except in the Saugor and Nerbudda Territories. I have stated that People are deterred from applying to our Courts in such Cases,—1st, because they have to prosecute through Three different Courts, under Regulation XVII. of 1817, the Thannahdar's or Police Court, the Magistrate's Court, and the Sessions Judge's Court,—because the Maximum of Punishment was Seven Years and the Minimum Three; 2d, because the Mahomedan Law of Evidence in such Cases rendered a Conviction very improbable under the most favourable Circumstances, and a Mahomedan Law Officer sat with the Sessions Judge."

"3. In the Nerbudda Territories the Regulations were not in force, and the Husband had to prosecute the Seducer of his Wife in One Court only, that of the European Officer in charge of the District, and in that Court there was no Mahomedan Law Officer, or Mahomedan Law of Evidence to be considered. The Maximum of Punishment amounted to Two Years Imprisonment, or Fine, or both. When the Impediments to Redress of such Wrongs be removed in the same Manner in all other Parts of India, by diminishing the Punishment to such a maximum Measure as the Magistrate's Court may be competent to award, and by doing away with the Necessity of a Mahomedan Law Officer in such Trials, the People will in all Parts be found ready to seek Redress through the constituted Tribunals, and the Seducer will then, and not till then, share the Danger with the seduced."

I have, &c.

(Signed) W. H. SLEEMAN,
General Superintendent of Measures for the
Suppression of Thuggee.

No. 107.

T. H. MADDOCK Esq. to J. C. C. SUTHERLAND Esq.
(Legislative Department, No. 138.)

Sir,

Fort William, 9th March 1840.

para. 14 to 16.

I AM directed by the Right Honourable the Governor General in Council to forward to you, for the Information of the Members of the Indian Law Commission, an Extract* from a Letter from Major Sleeman, Commissioner for the Suppression of Thuggee and Dacoitee, dated 18th ultimo, on the Subject of Kidnapping.

I have, &c.

(Signed) T. H. MADDOCK,
Secretary to the Government of India.

No. 108.

F. CURRIE Esq. to J. P. GRANT Esq.
(Judicial Department, No. 2,271.)

Sir,

Simlah, 14th September 1839.

I AM directed to acknowledge the Receipt of your Letter, No. 440, dated the 12th ultimo, and in reply to transmit, for the Information of the Honourable the President in Council, the annexed Copy of a Communication this Day addressed to the Officiating Registrar of the Sudder Dewanny Adawlut.

2. I am further desired to take this Opportunity of forwarding, for the Purpose of being submitted to his Honour in Council, the Transcript of a Letter from C. W. Fagan, dated the 23d October 1838, submitting Additions and Amendments proposed by him to be made to the Penal Code as published by the Indian Law Commissioners.

I have, &c.

(Signed) F. CURRIE,
Secretary to the Governor General, N.W.P.

Enclosure 1 in No. 108.

F. CURRIE Esq. to M. SMITH Esq.

(No. 2,246.)

Sir,

Simlah, 14th September 1839.

WITH reference to the Correspondence noted in the Margin*, I am directed by the Right Honourable the Governor General, to transmit, for Submission to the Court, the annexed Copy of a Letter from the Officiating Secretary to the Government of India, Legislative Department, dated the 12th ultimo, for the Purpose stated therein.

* Mr. Officiating Secretary Thomason's Letter 10th March 1838. Your Predecessor's, Mr. Officiating Secretary Thomason ditto, 4th June 1833.

I have, &c.

(Signed) F. CURRIE,

Secretary to the Governor General, N.W.P.

Enclosure 2 in No. 108.

(No. 98.)

C. W. FAGAN Esq. to J. THOMASON Esq.

Sir,

Moradabad, 23d October 1838.

A DILIGENT Perusal of the Penal Code as published by the Law Commissioners having created a Belief in my Mind that Additions and Amendments might be advantageously made, I beg to submit the following Pages for the Consideration of the Right Honourable the Governor General.

Such Remarks as occurred to me have been thrown into the Shape of *additional* and *amended* Clauses. They have been classed under their respective Chapters; and for Facility of Reference and Comparison the Clauses have been headed, Additional, or Amended, as the Case may be.

The additional Clauses, which have reference to or should follow any particular Clause of the Original, bear a fractional Number attached to the Number of the Clause to which they refer. The amended Clauses bear the Number of the original Clauses. Should the Views I have taken be erroneous, I beg to deprecate all Severity of Criticism; and in this Hope

I have, &c.

(Signed) C. W. FAGAN.

CHAPTER III.

General Exceptions.

Clause Additional.—Whoever shall commit any of the Offences described in this Code, and shall become insane subsequent to the Commission of the Offence, shall not be liable to Punishment for such an Offence.

NOTE.

The Provision contained in this Clause is by no means adverse to the Penal Law; nor does there exist, as far as I am aware, any Objection to its forming Part and Portion of this Code.

The enlightened Spirit of the Age has placed itself in opposition to the Infliction of all barbarous Punishments, and no Punishment can be so justly characterized as such as one which would present the lamentable Spectacle of the Infliction of the Rigours of the Law on the Victim of Insanity. Such an Infliction would not only be abhorrent, from the humane Feelings of the Community, but it would have a most impolitic Effect, by arming those Feelings against the Law, while at the same Time the Fact of Insanity having been superinduced would afford a most violent Presumption of its having previously existed in a latent State, a Presumption leading to the Inference of the Punishment having been unjustly inflicted.

CHAPTER V.

Of Offences against the State.

Clause Additional, 113½.—Whoever shall wilfully publish and disseminate, by Word, by Writing, by Deed, by Signs, or by written Representations, false and pretended Prophecies, tending to excite Doubts of the Stability of the Government established by Law in the Territories of the East India Company, shall be punished with Banishment for Life or for any Term from the Territories of the East India Company, to which Fine may be added, or with simple Imprisonment for a Term which may extend to Three Years, to which Fine may be added, or without Fine.

Clause Additional, 114½.—Whoever wages War against the Government of any Power at Peace with the Government established by Law in the Territories of the East India Company, or attempts to wage such War, or by Instigation, Conspiracy, or Aid previously abets the waging of such War, shall be punished with Imprisonment of either Description for a Term which may extend to Three Years and shall not be less than One Year, and shall also be liable to Fine.

C. c.

Clause Additional, 115½.—Whoever counterfeits the Seal of the Government established by Law in the Territories of the East India Company, or makes any Die for the Purpose of counterfeiting such Seal, or is in possession of any Implement or Material with the Intention of employing the same for counterfeiting such Seal, or is in possession of any Document bearing such counterfeited Seal, or whoever previously abets by Instigation, Conspiracy, or Aid the counterfeiting such Seal without the Territories of the East India Company, shall be punished with Imprisonment of either Description for a Term which may extend to Seven Years, and shall also be liable to Fine.

If any Person, by doing anything whereby he commits an Offence under the last preceding Clause, also commits an Offence under any other Clause of this Code, the Punishment shall be cumulative.

NOTE A.

The Offence defined in this Clause, being one of a most dangerous Nature to the British Rule, requires to be expressly provided for by a separate Enactment, as it cannot be reached by any of the Clauses of this Chapter.

The Offence may be committed without any Attempt to excite Feelings of Disaffection, and it would therefore not be cognizable under Clause 113.

The Credit attached to fictitious Prophecies is One of the Superstitions so prevalent over the East, and in no Country has it taken so deep a Root as in the Regions of Hindoostan. No wise Government would unnecessarily take Notice of mere Straws floating on the Surface of the Current of public Opinion, but it would be wanting in Watchfulness if it did not carefully restrain the Dissemination of Doctrines subversive of its own Existence, -- Doctrines not the less pernicious from their having obtained a certain religious Sanction.

NOTE B.

The Object of this Clause is to protect Governments at *Peace* with the British Government. Clause 114 only protects Governments in *alliance* with the British Government, while Clause 115 only takes cognizance of Offences committed in a certain Locality, *i. e.*, within the Territories of the British Government. The sacred Interests of Peace, however, and of Justice, demand that Protection should be extended to *both*, while the Difference in the Punishment which I have affixed will, as far as Policy and Expediency are concerned, be a sufficient Distinction to mark the superior Regard which we entertain towards those Nations who are in *alliance* with our own.

NOTE C. c.

The Offence herein described and provided for is of so serious a Nature that it appears highly impolitic to allow it to be noticed only in a transient Manner, under the Provisions of the Chapter against Forgery, and as the Degree of Punishment is proportioned to the Heinousness of the Crime, the accumulated Punishment provided in both the Chapters will only be sufficient to meet the portentous Consequences which might result from so treasonable an Act as the counterfeiting of the public Seal. A proper Regard for Classification seems also to require, that, being intrinsically an Act against the State, in which Light it is regarded by other Codes, it should be included in the Chapter reserved for such Offences.

CHAPTER VI.

Of Offences relating to the Army and Navy.

Exceptions to Clause 124. Amended.—This Provision does not extend to the Case in which the Harbour is given by the Wife or Relation in the direct ascending or descending Line, or Brother or Sister, of the Person to whom the Harbour is given.

NOTE A.

The Alteration in this Clause consists in the Omission of the Words "Husband or," as they are obviously superfluous, as the Soldier or Sailor is the Person referred to by the Words "to whom the Harbour is given." Nor is it a sufficient Answer to this Objection, that, as Experience and Military Annals have shown, Women have sometimes been so hardy and so bold as to perform all the Duties of a Soldier or Sailor, since, though such is a possible Case, the Law does not recognize Women in its Definition of a Soldier or Sailor. *

CHAPTER VII.

Of Offences against the public Tranquillity.

A. **Clause Additional, 135½.**—Whoever, committing the Offence described in Clause 135 of this Code, remains armed with any Weapon for shooting, stabbing, or cutting, or makes Preparation for committing the Offence of rioting by arming himself with any Weapon whatever, shall be punished with Imprisonment of either Description for a Term which may extend to Three Years, or Fine, or both.

B. **Clause additional.**—Whoever, knowing that a riotous Assembly has taken place, and being called upon by the Magistrate or other Chief Police Officer to aid in dispersing the riotous Assembly, fails to give his Aid in suppressing the Riot, shall be punished with Fine which may extend to 500 Rupees.

Exception

Exception.—This Provision does not extend to Women or Children under 16 Years of Age, or to any other Persons who are rendered incapable by Age, Disease, or Infirmary.

Clause Additional.—Whoever shall maim, wound, or kill any Person committing the Offences described in the Clauses of this Chapter after the riotous Assembly has been warned to disperse in the Manner prescribed in the Code of Procedure, shall be held guiltless.

Clause Additional.—Whoever, having joined a riotous Assembly of Twelve or more Persons, shall by force prevent the reading of the Proclamation for the Dispersion of such Assembly in the Manner prescribed in the Code of Procedure, shall be punished with Imprisonment of either Description for a Term which may extend to Five Years, or Fine, or both.

If any Person, by doing anything whereby he commits an Offence under the preceding Clause, also commits an Offence under any Clause of this Code, the Punishment shall be cumulative.

NOTE A.

The Offence referred to in this Clause being One of an aggravated Nature, and consequently deserving of a higher Degree of Punishment than is awarded to the simple Offences contained in Clauses 129, 132, and 135, it seems expedient to class it under a separate Head, as it differs from Clause 129 and 135 in the important Facts of being armed with offensive Weapons, and from Clause 132 in the equally material Circumstance of Continuance in a riotous Assembly after a legal Proclamation for Dispersion.

NOTE B.

The Principle of this Provision is recognized by the English and other Penal Codes; and I am not aware that sufficient Grounds exist for its Omission in the present Chapter. Of the Obligation that every Subject is under to aid the ministerial Authorities in the Preservation of the public Peace there cannot be any Doubt, and it is therefore only requisite to specify the Classes who from especial Causes may be considered exempt from the Obligation to such Co-operation. This has been done in the Exception immediately following; but it may be noted that, in opposition to the English Law, Clerical Persons have not been considered to be relieved from their Duties as Citizens; while, on the other hand their Exhortations and Injunctions to the Conservation of the Peace will on most Occasions be as effectual as personal Exertions to the Attainment of the Object to which they are directed, and at the same Time be in keeping with their sacred Calling.

NOTE C.

As on the Occasions of rioting Crimes of the deepest Dye are likely to be committed, in case a public Servant fails energetically to perform his Duty, and such a Performance cannot be expected from him unless he feels himself to be protected by the Law in such a Way as cannot admit of Cavil, and some specific Act should be constituted the Limit the Transgression of which on the Part of the Rioters should justify the active Interposition of Authority, the reading of the Proclamation to disperse appears to be the Measure the best adapted to impress Rioters with a due Sense of the Danger to which they expose themselves by illegally continuing Members of a riotous Assembly.

NOTE D.

The Proclamation to disperse is the main Resource on which the Civil Authority has to depend short of actual Force. To give it Efficiency it must be respected, and to ensure it Respect it must be guarded by the severest Penalties, and the more it is respected the less Necessity will there be to have recourse to actual Force. The Prevention by Violence of the reading of the Proclamation is the most serious Offence immediately connected with the Subject of Rioting, and, being a specific Offence, should be specifically provided for, for though it is punishable by Clause 179 of Chapter IX., as an Interruption to a public Servant in the Discharge of his public Functions, the Punishment is obviously inadequate.

CHAPTER VIII.

Of the Abuse of the Powers of Public Servants.

Clause Additional, 144½.—Whoever, being in any Office which gives him legal Authority to keep Persons in confinement, while keeping any Person in confinement who is charged with or convicted of any Crime or Misdemeanor, uses Violence towards such Person, and thereby extorts a Confession from such Person, or induces such Person to become an Approver against his Will, shall be punished with simple Imprisonment for a Term which may extend to Two Years, or Fine, or both.

NOTE A.

The Violence which forms the main Part of the Offences referred to in this Clause would on ordinary Occasions be punishable as an Assault under Chapter XVII. The Circumstances, however, under which, and the Persons by whom and the Purpose for which, it is used, give it a distinct and highly aggravated Character. It is an Offence, unhappily, too prevalent amongst the subordinate Officers to whom the Police Administration is

intrusted, and the Impunity with which, it is much to be feared, they are guilty of it, renders them heedless about its Perpetration. When, however, it is recollected that it leads to complete Perversion of Justice, and that it is a Source of the grossest Injustice and Detriment to the Properties and Liberties of Individuals, before a Remedy can be applied by superior Authority, this Provision will, I am persuaded, be neither considered uncalled for nor inexpedient.

CHAPTER IX.

Of Contempts of the lawful Authority of Public Servants.

- A. Clause 171 Amended.—Whoever offers any Resistance to the taking into Custody of himself or of any other, under the lawful Authority of any public Servant, as such, shall be liable for such Resistance to the whole Punishment assigned to the Offence for which the Person in whose Favour the Resistance was offered was directed to be taken into custody.
- A. Clause Additional, 172½.—If any Person, doing anything whereby he commits an Offence under the preceding Clause 171, shall also have committed an Offence under any Clause contained in any other Chapter of this Code, the Punishment shall be cumulative.
- A. Clause 173 Amended.—Whoever intentionally rescues or attempts to rescue any Person from any Custody in which that Person is detained under the lawful Authority of any public Servant, as such, shall be liable for such Rescue or Attempt to rescue to the whole Punishment assigned to the Offence for which the Person in whose Favour the Rescue or Attempt to rescue was made was directed to be taken into custody.

NOTE A.

The Alteration in this Clause consists in the Degree of Punishment assigned to the Offence which is referred to. The Principle on which the Alteration has been made is, that it is desirable to apportion the Degree of Punishment to the Heinousness of the Crime. If the Words of the Original are retained all Instances of Resistance to lawful Authority will be placed upon the same Footing: Resistance to a Warrant on a Charge of Theft and Charge of Dacoitee will be punishable in the same Degree. But it is obvious that this would not only be oppressive to the Individuals, but it would defeat the Ends of Justice; for it would so happen that in Cases of petty Theft this Punishment would exceed that for the Offence itself, while in heinous Crime it would act as a most powerful Incentive to Resistance to lawful Authority, for all heinous Offenders, or the Friends and Relations of Offenders of such a Stamp, would not have any Hesitation to incur the trifling Penalty contained in the original Clauses, possessing, as they would, every Chance of saving themselves or their Friends by a successful Resistance from the heavy Penalties due to their Crimes. If, therefore, the above Objections to the Words of the original Clause have any Weight, it will be necessary to make a similar Alteration in Clause 173.

CHAPTER X.

Offences against Public Justice.

- A. Clause 188½ Additional.—Whoever, in any Stage of any Judicial Proceeding, being bound by an Oath, or by a Sanction tantamount to an Oath, to state the Truth, states that to be true which he could not possibly know to be true, or states his Belief in the Truth of a Fact touching any Point material to the Result of such Proceeding which he knows to be false, or in the Truth of which he could not possibly have any Belief, is said to give false Evidence.
- B. Clause Additional, 196½.—Whoever, fraudulently or for the Purpose of Annoyance, previously abets, by Instigation, Conspiracy, or Aid, the Institution of any Suit in a Court of Justice, knowing that the Person instituting such Suit has no just Grounds to institute such Suit, shall be punished with Imprisonment of either Description for a Term which may extend to One Year, or Fine, or both.
- B. Clause Additional, 196½.—Whoever, belonging to the Profession of the Law, commits the Offence described in the last preceding Clause, shall be punished with Imprisonment of either Description for a Term which may extend to Two Years, or Fine, or both.
- C. Clause 206. Amended.—Whoever, except as herein-after excepted, knowing that any Person has escaped from any Custody in which such Person was lawfully detained in pursuance of the Sentence of a Court of Justice, or by virtue of a Commutation of such Sentence, or has returned from lawful Transportation or Banishment, the Term of such Transportation or Banishment not having expired, and the Punishment of such Person not having been remitted, gives Harbour, Assistance, or Intelligence to such Person, with the Intention of saving such Person from the legal Consequences of such Escape or Return, shall be considered an Accessory after the Fact to the Crime or Misdemeanor for which the Prisoner escaping shall have been sentenced.
- C. Clause Additional, 206½.—Whoever shall knowingly and wilfully enable or aid any Person to escape from Custody who is in Custody in pursuance of the Sentence of a Court of Justice shall be considered an Accessory after the Fact to the Crime or Misdemeanor for which the Prisoner escaping shall have been sentenced.

Clause

Clause Additional.—Whoever, being a public Officer, and having any Person in Custody in pursuance of the Sentence of a Court of Justice shall intentionally and voluntarily allow such Person to escape, shall be liable to a Punishment equal to that to which the Person escaping may have been sentenced. C.

Clause Additional.—Whoever shall demand or shall take any Reward from any Individual under an Engagement to procure the Restoration of his stolen Goods to him shall be liable to the Punishment to which the principal Offender would have been liable. D.

Exception.—This Provision shall not extend to the Case in which the Taker of the Reward shall cause the Apprehension and Conviction of the principal Offender.

Clause Additional.—Whoever, having been robbed, shall take back his stolen Property or receive other Compensation for such Property, under an Engagement not to prosecute, or shall do any Act which may lead to a reasonable Presumption of his having entered into such an Engagement, shall be liable to Fine, which may extend to 500 Rupees, and shall not be less than 50 Rupees. D.

Clause Additional.—Whoever, under any of the Provisions of this Code, shall give public Information regarding the Commission of any Crime or Misdemeanor, and shall compound with the Defendant, or shall take any Money or other valuable Thing, or the Promise of any Money or other valuable Property, from him, with the view of saving him from the Penalty of the Law, shall be liable to Imprisonment which may extend to Three Months, and to Fine which may extend to 100 Rupees. D.

Clause Additional.—Whoever, directly or indirectly, gives or offers to any public Officer engaged in the Administration of Justice, any Gratification whatever, as defined in Chapter VIII. of this Code, with the view of influencing him in the Exercise of his official Functions, shall be punished with Imprisonment of either Description for a Term which may extend to Three Years, or Fine, or both. E.

Exception.—This Provision shall not extend to the Case in which the Giver of the Gratification shall cause the Apprehension and Conviction of the Receiver.

Clause Additional.—Whoever shall administer or cause to be administered any illegal Oath, binding the Person taking it to commit any illegal Act, shall be punished with Imprisonment of either Description, which may extend to a Term of Seven Years and shall not be less than Three Years.

Clause Additional.—Whoever shall voluntarily bind himself, or shall bind any other Person, or cause him to be bound, by a Sanction tantamount to an Oath, to commit any illegal Act, or to omit any Act he is legally bound to do, shall be punished with Imprisonment of either Description for a Term which may extend to Seven Years and shall not be less than Three Years.

Clause Additional.—Whoever, under Compulsion, shall bind himself or another Person, or shall cause him to be bound, by an unlawful Oath of the Nature described in the Two preceding Clauses, and shall not reveal the same within Ten Days after the Violence has been removed, shall be punished with Imprisonment of either Description which may extend to a Term of Three Years and shall not be less than One Year.

Clause Additional.—Whoever, not being a public Servant in any Department, carries any Token resembling any Token carried by any public Servant in any Department, shall be punished with Imprisonment of either Description for a Term which may extend to Three Months, or Fine which may extend to 500 Rupees, or both.

NOTE A.

The Purport of this supplemental Clause is to define Two Species of Perjury which are not included in the original Definition ; for it may often happen, in the first place, that the Substance of the Statement deposed to by the Witness may be true in its Tenor, while the Circumstances may be such that it was impossible for the Witness to be personally cognizant of the Fact. In this Case the Truth is a mere Incident, while the Witness is obviously as much perjured as if the Fact to which he deposed had no Reality. Moreover, on numerous Occasions it is necessary, where presumptive Evidence is produced, to examine Individuals regarding, not the Reality of certain Facts, but regarding their Belief in the Existence of such Facts. It is true that in this Case the Testimony is not absolute, but as it is material to the due Decision of the Question at issue, and the Falsehood is wilful, and arises from a deliberate Intention of injuring an Individual and of perverting Justice, it differs in no essential Point from absolute Perjury as described in the original Clause, and should be equally liable to the Penalties of the Law.

NOTE B.

There is no Provision in this Code for the Offences adverted to in these Two Clauses. They are punishable by other Codes of Law ; and India is certainly not the Country where excessive Encouragement should be given to unfounded Litigation, for the Facilities to Litigation which exist in this Country, and the Litigiousness which is characteristic of the People, render it desirable that no Check should be removed which is consonant with the Principles of Justice, while it is no less necessary for a proper Administration of Justice that the Time of Judicial Officers should not be engrossed by frivolous and vexatious Complaints. If, therefore, the Grounds for adopting this Clause have any Weight they will

a fortiori be applicable to those Individuals whose professional Education gives them the fullest Opportunities of judging what are and what are not insufficient Grounds for the Institution of a Suit, and as the personal Interest of such Persons would naturally lead them to transgress the proper Limits, the Law must interpose in regard to them with a severer Penalty than what would be necessary for the Community.

NOTE C.

It is proposed by these Three Clauses, the first of which is a proposed Amendment and the other Two additional Clauses, to guard more efficiently against the Commission of the Offences referred to, by enhancing the Degree of Punishment; for to retain the Punishment prescribed in the Original would have the same moral encouraging Effect as is described in Note A. to the amended Clause 173. of Chapter IX., and if the Grounds therein assigned are sufficiently conclusive to sanction the Adoption of the proposed Amendment in that Chapter, their Applicability will be greater in the present, when the runaway Convict has passed through the Ordeal of a legal Court, and has been duly sentenced.

NOTE D.

These Three Clauses relate to Offences which are unprovided for by this Code, and the Nature and Tendency of which are identical, as they all lead to the Protection of the Criminals from the Penalties of the Law, arising from Motives of pecuniary Interest existing in those who, from their Position, and from the Information of which they are possessed, would otherwise be efficient Instruments of ensuring their Punishment.

These Offences are also of such repeated Recurrence, and present such Obstacles to the Conviction of Offenders, that it is much to be feared that if they are not checked by especial Provisions declaratory of their Criminality they will be excessively pernicious to the whole System of Police. To give, however, every Facility to the Conviction of Offenders, an Exception has been framed which it seems expedient to admit on general Grounds. It would also be obviously objectionable to place this Sufferer by Theft on the same Footing as the Offenders adverted to in the Two other Clauses, but it would be equally so to allow him with Impunity to defeat the Ends of Justice for his own private Interest, since, if this were to be admitted, the whole Machinery for the Administration of Justice would be unnecessary.

NOTE E.

Every Means should be adopted for ensuring and preserving the Purity and Integrity of Judicial Officers, and every Attempt to undermine these necessary Qualities being an Offence against the public Interests of the most sacred Kind, should be visited with the severest Penalties; nor is it sufficient that the Conduct of One of the Parties implicated in the Offence should meet with Condemnation; of their Participation in the Guilt there cannot be any Doubt, and they should consequently share the Punishment.

Circumstances, however, may exist under which the Punishment of One Party can only be secured by the Pardon of the other, and with the View of meeting such Contingencies an Exception has been annexed to the Clause; Justice will thus be benefited, and the Law will have done its Duty in declaring and punishing the Criminality of both Parties.

CHAPTER XI.

Of Offences relating to the Revenue.

Clause Additional, 225½.—Whoever, not being legally authorized to send a Letter or Packet free of Postage, intentionally sends any Letter or Packet to any Post Office with any Signature or Superscription whereby it is or may be received exempt from the Payment of Postage, shall be punished with Fine which may extend to 100 Rupees.

Clause Additional, 225½.—Whoever sends or causes to be sent any Letter or Packet by an illegal Post shall be punished with Imprisonment of either Description which may extend to Three Months, or Fine which may extend to 1,000 Rupees, or both.

Exception.—The Provisions of Clause 225 and Clauses 225½ (1 and 2) do not extend to the Case in which any Letter or Packet is sent by a private Messenger.

CHAPTER XII.

Of Offences relating to Coin.

Clause Additional, 242½.—Whoever, knowing any Coin to be counterfeit, and delivering the same to any other Person as genuine, has at the same Time more counterfeit Coin in his Possession, shall be punished with Fine which may extend to 100 Rupees, and in addition to Ten Times the Value of the Coin of which such counterfeit Coin is a Counterfeit.

Clause Additional, 242½.—Whoever shall commit a Second Offence of the Nature described in Clause 242, within Fifteen Days subsequent to the Commission of the First Offence, shall be punished with Fine, which may extend to 100 Rupees, in addition to Ten Times the Value of the Coin of which such counterfeit Coin is a Counterfeit.

Clause

Clause Additional.—Whoever shall refuse to receive any Coin in satisfaction of any Demand, which Coin has been declared by competent Authority to be legal Tender, shall be liable to Fine which may extend to 100 Rupees.

• CHAPTER XIII.

Of Offences relating to Weights and Measures.

Clause Additional.—Whoever pursues any Trade requiring the Use of a Balance, Weight, or Measure, and being directed by competent Authority to produce such Balance, Weight, or Measure fails to yield Obedience to such Order, or affords any Hindrance or Obstruction to any Person duly authorized to examine such Balance, Weight, or Measure, shall be punished with Imprisonment of either Description which may extend to One Year, or Fine, or both.

CHAPTER XIV.

Of Offences affecting the Public Health, Safety, and Convenience.

Clause 258, Amended.—Whoever, knowingly, disobeys any Rule made and promulgated according to Law by the Government of India or by the Government of any other Presidency, for putting any Vessel in a State of Quarantine, or for regulating the Intercourse of Vessels in a State of Quarantine with the Shore or with other Vessels, or for regulating the Intercourse at Places or between Places where an infectious Disease prevails and other Places, shall be punished with Imprisonment of either Description for a Term which may extend to Six Months, or Fine which may extend to 500 Rupees, or both.

Clause 260, Amended.—Whoever sells or offers for Sale any Food or Drink, knowing the same to be noxious, shall be punished with Imprisonment of either Description for a Term which may extend to Six Months, or Fine which may extend to 500 Rupees, or both.

Clause Additional.—Whoever gives Motion to or drives any Vehicle, or rides on a public Way, in a Manner so rash or negligent as to indicate a Want of due Regard for Human Life, shall be punished with Imprisonment of either Description for a Term which may extend to Six Months, or Fine which may extend to 2,000 Rupees, or both.

Clause Additional.—Whoever has Charge or Possession of any Building intended for the public Convenience, and omits to take such Order with it as he believes to be sufficient to guard against probable Danger to Human Life or of grievous Hurt, shall be punished with Imprisonment of either Description for a Term which may extend to Six Months, or with Fine which may extend to 2,000 Rupees, or both.

Clause Additional.—Whoever in any public Way or Thoroughfare of any Town or Village shall be openly drunk, to the Annoyance of those who pass along that Way or Thoroughfare, shall pay for the First Offence a Fine of Two Rupees, for the Second Five Rupees, and Ten for every subsequent Offence.

Clause Additional.—Whoever gives up Possession of and sets at large any Animal the Enlargement of which is attended with probable Danger to Human Life or bodily Hurt shall be punished as in Clause 273.

Clause Additional.—Whoever gives Motion to or drives any Vehicle, or rides or navigates any Vessel, or does, with any poisonous Substance, or with Fire or any combustible Matter, or with any explosive Substance, or with any Machinery, or with any Building which he has a Right to pull down and repair, or with any Animal in his Possession, any Act so rash and negligent as to indicate a Want of due Regard for the Property of any Person, or omits to take what he believes to be sufficient Precaution against any probable Danger to such Property, shall be punished with Imprisonment of either Description which may extend to One Month, or Fine which may extend to 500 Rupees, or both.

Clause Additional.—Whoever keeps or has Charge of any Building for the Reception or Entertainment of Travellers, and refuses to receive or to entertain any Traveller without good and sufficient Cause, shall be punished with Fine which may extend to 100 Rupees.

Clause Additional.—Whoever, in any public Way or Thoroughfare, openly and notoriously pursues any Means of Livelihood or performs any Act which is repugnant to the Religion, subversive of the Morals, or opposed to the Feelings of the Public, shall be punished for the First Offence with a Fine which may extend to 50 Rupees, for the Second to 100 Rupees, and to 200 Rupees for every subsequent Offence.

CHAPTER XV.

Of Offences relating to Religion or Caste.

Clause 284, Amended.—Whoever, with the Intention of causing any Person to lose Caste, commits any Assault which causes that Person to lose Caste, or induces that Person to do ignorantly anything whereby that Person incurs Loss of Caste, or which is offensive to his religious Feelings, shall be punished with Imprisonment of either Description for a Term which may extend to Six Months, or Fine which may extend to 2,000 Rupees.

Clause Additional.—Whoever, with the Intention of wounding the Feelings or insulting the Religion of any Person, causes any Disturbance in any Churchyard, Burial Ground, or other Place of Sepulture, shall be punished with Fine which may extend to 100 Rupees and shall not be less than 10 Rupees.

Clause Additional.—Whoever omits to take such Order with any Animal in his Possession as he believes to be sufficient to guard against any probable Offence to the religious Feelings of any Person shall be punished with Imprisonment of either Description which may extend to Two Months, or Fine, or both.

CHAPTER XVI.

Of illegal Entrance into and Residence in the Territories of the East India Company.

Clause 287, Amended.—Whoever, being a Subject of the King, or the Subject of any Government of Europe or of America, and not a Native of the Territories of the East India Company, on his Arrival by Sea in any Place within the said Territories, omits to make known in Writing his Name, Place of Destination, and Object of Pursuit in India to the chief Officer of Customs, or other Officer authorized for that Purpose at the Place at which such Subject of the King, or of any Government of Europe or America, has arrived, shall be punished with Fine which may extend to 1,000 Rupees.

Clause 288, Amended.—Whoever, being a Subject of the King, or the Subject of any Government of Europe or of America, and not a Native of the Territories of the East India Company, enters the said Territories by Land, not being legally authorized so to do, shall be punished with simple Imprisonment for a Term which may extend to 2,000 Rupees, or both.

Clause 289, Amended.—Whoever, being a Subject of the King, or the Subject of any Government of Europe or of America, and not a Native of the Territories of the East India Company, and not having such a Licence as is by Law necessary to authorize such a Subject of the King to reside in a certain Part of the said Territories, enters or resides in that Part of the said Territories, shall be punished with simple Imprisonment for a Term which may extend to Three Months, or Fine which may extend to 2,000 Rupees, or both.

CHAPTER XVIII.

Of Offences affecting the Human Body.

Exception to Clause 359, Amended.—Sexual Intercourse by a Man with his own Wife is in no Case Rape, unless the Woman shall have been married without her Consent.

Clause Additional, 360½.—Whoever in any way aids or abets any Person in a Marriage with a Woman without her free and intelligent Consent, in consequence of which Marriage such Person has sexual Intercourse with the Woman, with or without her Consent, shall be punished with Imprisonment of either Description for a Term which may extend to Fourteen Years and must not be less than Two Years, and shall also be liable to Fine.

CHAPTER XIX.

Offences against Property.

Additional Clause.—No Woman committing any of the Offences described in Clauses 363 to 374, and in Clauses 383 to 440 of this Chapter, shall be liable to Punishment for such Offence if the Offence shall have been committed by her while in company with or by the Instigation and Coercion of her Husband.

Clause 393, Amended.—A Person is said to “cheat” by Personation if he cheats in any of the Ways herein-after enumerated; namely,—

First, by pretending to be some other Person.

Second, by taking not his own Name.

Third, by taking any Title or Addition to which he has not a Right.

Fourth, by dropping any Title or Addition to which he has a Right, and which is ordinarily annexed to the Names of those who have a Right to it.

Fifth, by pretending to be of a Country of which he is not.

Sixth, by pretending to be of a Calling of which he is not.

Seventh, by pretending to be of a Family of which he is not.

Eighth, by falsely pretending to hold or to have held any Office, real or imaginary.

Ninth, by falsely pretending to be related by Blood or Marriage to any Person, real or imaginary.

Tenth, by falsely pretending to be in the Employ of any Party, real or imaginary.

Eleventh, by falsely pretending to be possessed of any Faculty, real or imaginary.

Twelfth, by falsely pretending to be possessed of supernatural Powers.

ILLUSTRATION.

(N.)—A pretends to be a Wizard or Witch. A cheats by Personation.

(O.)—A pretends to be able to avert Hail and to cause Rain to fall. A cheats by Personation.

(P.)—A pretends to the Science of discovering stolen Goods. A cheats by Personation.

CHAPTER XX.

Of Offences relating to Documents.

Clause Additional, 453½.—Whoever, being a public Servant in any Department, and being as such interested with the keeping of Documents, fraudulently destroys or defaces, or fraudulently attempts to destroy or to deface, or fraudulently secretes, any Document, shall be punished with Imprisonment of either Description, for a Term which may extend to Two Years, or Fine, or both.

Clause Additional.—Whoever, being intrusted with the Preparation or the keeping of any Document required by any public Department, shall refuse to prepare such Document, or to produce it for the Inspection of any Person concerned desirous of examining it, or of any Person competent to require the Preparation and Production of such Document, shall be liable to Fine which may extend to 200 Rupees and shall not be less than 50 Rupees.

CHAPTER XXIII.

Of the Criminal Breach of Contracts of Service.

Clause Additional, 463½.—Whoever, being bound by a lawful Contract to perform personal Service, illegally omits to perform it, or performs it in a careless and negligent Manner, intending or knowing it to be likely that such illegal Omission or careless and negligent Performance will cause Injury to some Party, shall be punished with Imprisonment of either Description for a Term which may extend to One Month, or Fine which may extend to 100 Rupees, or both.

Exception.—This Provision shall not extend to the Case in which the Terms of the Contract have not been performed by the opposite Party.

Illustration (A).—A contracts to serve Z as a Kitnudgar. Z refuses to pay his Wages after they are due. A runs away. A has committed no Offence.

Illustration (B).—A contracts to serve Z as a private Servant. Z beats A. A runs away. Good Treatment being an implied Term of Contract, and not having been performed by Z, A commits no Offence by running away.

Exception to Clause 463, Additional.—This Provision shall not extend to the Case in which the Terms of the Contract have not been performed by the opposite Party.

Exception Additional to Clause 464.—This Provision shall not extend to the Case in which the Terms of the Contract have not been performed by the opposite Party.

Exception to Clause 465, additional.—This Provision shall not extend to the Case in which the Terms of the Contract have not been performed by the opposite Party.

CHAPTER XXIV.

Of Offences relating to Marriage.

Clause Additional.—Every Man who induces any Woman under Sixteen Years of Age to marry him, without the Consent of her Father, or, if her Father be dead, without the Consent of her Guardian, or, if there be no Guardian, without the Consent of her Mother, shall be punished with simple Imprisonment for a Term which may extend to Three Years, and shall be liable to Fine.

Clause Additional.—Every Woman who induces any Man under Sixteen Years of Age to marry her, without the Consent of his Father, or, if his Father be dead, without the Consent of his Guardian, or, if there be no Guardian, without the Consent of his Mother, shall be punished with simple Imprisonment for a Term which may extend to Three Years, and shall be liable to Fine.

CHAPTER XXVII.

ADDITIONAL

Offences against the Law of Nations.

Whoever prosecutes in a Court of Civil Law or causes or solicits the Issue from any such Court of Process against any King or independent Ruler of any Country in Amity with the British Government, and whoever executes any such Process and distrains the Goods of any such King or Ruler, commits an Offence against the Law of Nations.

Whoever prosecutes in a Court of Civil Law or causes or solicits the Issue from any such Court of a Process against the Ambassador of any King or independent Ruler of any Country, whether at Enmity or in Amity with the British Government, and whoever executes any such Process and distrains the Goods of any such Ambassador, commits an Offence against the Law of Nations.

Whoever prosecutes in a Court of Civil Law, or causes or solicits the Issue from any such Court of a Process against the Servants and Retainers of any King or Ruler, or of the Ambassador of any King or Ruler, whose Names may have been duly registered in the Office of the Political Secretary to Government, or other Officer duly authorized, and distrains the Goods of any such Servant or Retainer, commits an Offence against the Law of Nations.

Whoever commits the Offence defined in Clause 1. of this Chapter shall be liable to Fine which may extend to 2,000 Rupees, and also Imprisonment which may extend to Six Months.

Whoever commits the Offence defined in Clause 2. of this Chapter shall be liable to Fine which may extend to 1,000 Rupees.

Whoever commits the Offence defined in Clause 3. of this Chapter shall be liable to Fine which may extend to 100 Rupees.

No. 109.

NOTE by A. AMOS Esq.

I have not looked particularly into the Merits of the Suggestions sent by Mr. Fagan; but he appears to have taken much Pains, and the Suggestions are put in a more methodical Order than any others which we have received. If Mr. Fagan's Opinion is considered valuable, from his Experience or Abilities, he should be thanked for his Communication somewhat particularly.

(Signed) A. AMOS,

No. 110.

J. P. GRANT Esq. to F. CURRIE Esq.

(Legislative Department, No. 538.)

Sir,

Fort William, 14th Oct. 1839.

I AM directed by the Honourable the President in Council to acknowledge the Receipt of your Letter dated the 14th ultimo, No. 2,271, and with reference to your Letter to the Sudder Court at Allahabad, therein mentioned, and to the Honourable Court's Despatch of the 6th March 1839, No. 3, to request that you will inform the Right Honourable the Governor-General, North-western Provinces, that the President in Council thinks the public Service would be forwarded if his Lordship were particularly to call upon any Individuals who in his Lordship's Judgment may be peculiarly qualified to assist Government by their Observations upon the proposed Penal Code to submit their Remarks either upon the whole Code or upon Parts of it.

2. The Names that now occur to his Honour in Council of Gentlemen in the North-western Provinces, whose Remarks would be of particular Value are those of Mr. Turnbull, now on Leave at Simlah, and Mr. R. M. Bird. The Judges present with the Sudder Court have, his Honour in Council, observes, already been called upon.

3. I have this Day, by Direction of his Honour in Council conveyed the Thanks of Government to Mr. Fagan for his Observations on the proposed Code, which were forwarded with your Letter.

I have, &c.

(Signed) J. P. GRANT,

Officiating Secretary to Government of India.

No. 111.

J. P. GRANT Esq. to C. W. FAGAN Esq.

(No. 539.)

Sir,

Fort William, 14th October 1839.

I AM directed by the Honourable the President in Council to convey to you the Thanks of the Government of India for the Observations on the proposed Penal Code which you have communicated through the Right Honourable the Governor General, North-western Provinces, and which it is evident are the Result of much Labour and Reflection. Your Remarks and Suggestions will be taken into full Consideration when the Government enters upon a Review of the Code. This will be greatly facilitated, I am directed to say, by the methodical Arrangement which you have adopted.

I have, &c.

(Signed) J. P. GRANT,

Officiating Secretary to the Government of India.

No. 112.

F. CURRIE Esq. to J. P. GRANT Esq.
(Judicial Department, No. 2,658.)

Sir,

Simla, 24th October 1839.

WITH reference to your Letter No. 440, dated the 12th August last, I am directed by the Right Honourable the Governor General to transmit, for the Information of the Honourable the President in Council, the annexed Copies of a Letter from the Officiating Registrar of the Nizamut Adawlut for the North-western Provinces, dated the 27th ultimo, and of mine in reply.

I have, &c.

(Signed) F. CURRIE,
Secretary to the Governor General, N.W.P.

Enclosure 1 in No. 112.

(No. 1,489.)

M. SMITH Esq. to F. CURRIE Esq.

Sir,

Allahabad, 27th September 1839.

I AM directed to acknowledge the Receipt of your Letter, No. 2,246, dated 14th instant, with the annexed Copy of a Communication from the Officiating Secretary to the Government of India, regarding the Penal Code.

2. In reply, the Court instruct me to request that you will submit, for the Information of the Right Honourable the Governor General, that the Circular issued by them, under Date 24th March 1838, upon Receipt of Mr. Officiating Secretary Thomason's Letter of the 10th of the same Month, calling for the Opinions and Comments of the several local Authorities upon the proposed Code, was responded to on the Part of by far the largest Portion of the Officers addressed by an Expression of their Want either of Leisure or Ability to offer Criticisms or suggest Improvements on that Production.

3. I am directed to state, that for their own Part the Court had commenced upon the Consideration of the Code with Earnestness, having devoted a Portion of the Day at various English Sittings to the Discussion of some Chapters, but that Interruption was caused by the Pressure of other Business, and subsequently the limited Number of Judges present with the Court prevented the Renewal of their Deliberations.

4. As soon as the State of Business may admit of their doing so to any good Purpose, the Court will not fail to resume the Subject with reference to the present Wishes of the Government of India; and in the meantime they would beg leave to suggest, as likely to be of advantage, that their Colleague Mr. Turnbull, now on Leave at Simlah, should be requested, in the event of his being in a State of Health to give his Attention to the Subject, to afford the Court the Benefit of his Experience with regard to such Parts of the Code as he may have considered or be now disposed to consider, in which Case the Observations of that Gentleman could be submitted to Government with those of the Court, and with such Reports as have been received from other Officers in the North-western Provinces.

N. A.,
N. W. P.
Present,

W. Lambert,
W. Monckton,
and B. Taylor,
Esquires, Judges

I have, &c.

(Signed) M. SMITH,
Officiating Registrar.

Enclosure 2 in No. 112.

F. CURRIE Esq. to M. SMITH Esq.
(Judicial Department, No. 2,657.)

Sir,

Simla, 24th October 1839.

I AM directed to acknowledge the Receipt of your Letter, No. 1,489, dated the 27th ultimo, and in reply to state, that the Right Honourable the Governor General is gratified at learning that the Question of remarking upon the proposed Penal Code has not been lost Sight of by the Court. He is aware that the heavy Duties of the Court leave the Judges little Leisure for examining and recording Remarks on so extensive a Subject, and it is the more satisfactory to know that the Work is in progress. His Lordship would, however, observe, that practical Comments on the Applicability of the several Provisions of the Code to the State of Crime and to the Circumstances of the Inhabitants of this Part of India would be more valuable than a critical Review of the Principles and Construction of the Work; and it must be evident that such a Document will be of more Weight as coming from the Court collectively, and as containing the deliberate Opinion of that Tribunal, than if a mere Record of the Opinion of One (however eminent in Experience and Discrimination) of its Members. His Lordship is on

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this Account, though yet more from what he is given to understand of the present State of Mr. Turnbull's Health, unwilling to make an official Application to that Officer for a Statement on the Subject, as suggested by the Court, though his Lordship is fully sensible of the Value that must attach to any Opinion of Mr. Turnbull's on Questions relating to the Law and Practice of our Courts.

I am, &c.
(Signed) F. CURRIE,
Secretary to the Governor General, N.W.P.

No. 113.

F. CURRIE Esq. to J. P. GRANT Esq.
(Judicial Department, No. 2,781.)

Sir,

Camp, Kurnaul, 15th November 1839.

I AM directed by the Right Honourable the Governor General to acknowledge the Receipt of your Letter, No. 538, dated the 14th ultimo, and in reply to state, that a Copy of your Letter has been sent to Mr. R. M. Bird, who has been requested, if he has Leisure, to make any Observations that he may consider would be of Service to the Government, either upon the whole of the Code or upon any Part of it.

2. With regard to Mr. Turnbull, I am desired to refer the Honourable the President in Council to the Correspondence with the Court of Nizamut Adawlut, Copies of which were sent to you with my Letter, No. 2,658, under Date the 24th ultimo.

I have, &c.
(Signed) F. CURRIE,
Secretary to the Governor-General, N.W.P.

No. 114.

R. N. C. HAMILTON Esq. to T. H. MADDOCK Esq.
(Judicial Department, No. 650.)

Sir,

Camp, Mynpoory, 24th February 1840.

WITH reference to Mr. Secretary Currie's Letter of 24th October last, I am directed by the Honourable the Lieutenant Governor to transmit, for Submission to the Right Honourable the Governor General in Council, the annexed Copy of a Letter from the Officiating Registrar of the Nizamut Adawlut, dated the 6th ultimo, together with the original Documents which accompanied it, relative to the proposed Penal Code.

I have, &c.
(Signed) R. N. C. HAMILTON,
Offic^e Secretary to the Lieutenant Governor, N. W. P.

Enclosure in No. 114.

M. SMITH Esq. to J. DAVIDSON Esq.

(No. 45.)

Sir,

Allahabad, 6th January 1840.

N.A., N.W.P.
Present,
Lambert,
Monckton,
B. Taylor,
Juires, Judges.

THE Court having now had under Consideration the printed Penal Code prepared by the Indian Law Commissioners, with reference to the Correspondence quoted in the Margin direct me to request that you will submit for his Lordship's Perusal, and for Transmission to the Government of India, the accompanying original Returns to their Circular, No. 383, dated 24th March 1838, together with the following Observations.

2. As regards the Replies received from such of the have responded to the Call made on them, the general Nature of which the marginal Classification will show, the Court would first observe, that they have not deemed it necessary to digest the Opinions contained in them into any abstract Form. They have thought it

Letter from Mr. Secretary Thomson, No. 638, dated 10th March 1839, with Copy of a Letter from the Government of India.
Circular of Nizamut Adawlut, dated 24th idem.
Letter from Mr. Secretary Currie, No. 2,246, dated 14th September last.
Letter from ditto, No. 2,657, dated 24th ultimo.

Authorities of these Provinces as
The following Authorities give no Opinion and offer no Remarks. Their Plea being chiefly Want of Time to perform that Duty properly.
Commissioner Benares.
Civil and Sessions Judge - Moradabad.
Etawah.
Allahabad.
Goruckpoor.
Joanpoor.
better

better to let those Letters speak for themselves, and for the most part have refrained from making Comments on the Points adverted to therein, as indicative of supposed Inappropriateness, Error, or Omission, in respect to which the Court in some Instances have dissented from such Views, and in others have presumed adequate Provision would be made by the Law of Procedure. The Court must, however, in some degree regret the Spirit in which One or Two Officers appear to have entered upon the Consideration of so grave and momentous a Subject, and which does not tend to add Value or Utility to their Strictures. The Court are sure that a Principle of Deliberation which excludes Candour, or postpones it to a Display of critical Skill, is not the best to engage in such a Work satisfactorily, or to perform it well. Quickness in detecting Imperfection is a much less rare Quality than Discrimination in approving Good, or Sagacity in suggesting better.

3. A Letter from the Court of recent Date (27th September) will have put before the Government for the N. W. Provinces the Causes which have hitherto operated to hinder an earlier Compliance on their Part with the Requisition originally made by the Government of India, under Date 12th February 1838, and to it the Court would beg to refer his Lordship, the Tenor of whose Reply would seem to indicate that the Cogeneity and Sufficiency of those Reasons are not called in question by the Government. If the Court add, that the Influence of the Causes referred to has not yet ceased, it is only that, unwilling as they are longer to delay the Discharge of an urgent Duty, a Circumstance may not be overlooked which must in some measure lessen the Weight of their Deliberations, and affect the Fulness and Value of their Report.

4. The Court observe, that the First Requisition of the Government of India aimed particularly at the Acquisition of valuable Information on any of the important Subjects to which the Code relates, with reference, besides, to the Detection of Defects and the Suggestion of Improvements, and they now see Reason to regret that, in circulating that Requisition, they did not take advantage of the Discretion accorded by the Instructions given them, to "take such Measures as may seem best for carrying into effect the Wishes of the Supreme Government," by devising some less general and more modified Plan for eliciting the Opinions of the several Authorities on such particular Questions as the individual Experience of each might have made him familiar with. The Court quite agree with his Lordship, that "practical Comments on the Applicability of the several Provisions of the Code to the State of Crime and to the Circumstances of the Inhabitants of this Part of India" possess more Value than "a critical Review of the Principles and Construction of the Work," though they fear that many Officers (and some qualified to communicate useful Hints and Suggestions) were induced to believe that a Disquisition of the latter Character was looked for; and thus, conscious of the Obstacles opposed to a deliberate and continuous Study of the Work by their numerous official Duties, and alarmed at so unlimited a Call on their Exertions with reference to a Subject so vast and momentous, attempted nothing towards the Fulfilment of the Wishes of Government and the Court. It is a Matter of Regret to the Court that some Mode was not devised (in the Words of the Magistrate of Allyghur, whose Observations they think judicious), either "by calling the Attention of Officers to the Discussion of any particular Chapter or Part of it, and furnishing them with Queries the Answers to which would condense their Opinions, or by indicating particular Points on which Opinions might be required," for giving fuller and more useful Effect to the Orders of the Supreme Government.

5. As respects the Court's own Duty, they are apprized of the Sentiments of the Honourable the Court of Directors, that the desired End may best be attained by their "reporting upon particular Parts of the Code with reference to the Systems of Criminal Law which they have heretofore administered," and it is in accordance with this Principle, and with the View lately taken of the Question by the Governor General, in which the Court have expressed their Concurrence, that they have endeavoured to proceed in the Examination the Result of which is now submitted.

6. The Court would commence by signifying generally their cordial Approval of the humane, liberal, and enlightened Spirit which appears to them to characterize this Compilation, and which is especially exemplified in the Notes appended to the Work, which, as well as the prefatory Remarks, must have been perused by all with Interest and Advantage. The Comprehensiveness of the Plan, and the general Success (as far as Success can be predicated of any Production not submitted to the Test of Practice) with which it has been executed, are also willingly recognised by the Court. Nevertheless they may be allowed to doubt whether the System followed in respect to the Preparation and Circulation of the Code to the Public is the best considered which could have been adopted.

Magistrates	-	-	Delhi. Shajehanpore. Etawah. Cawnpore. Humnabad. Allahabad. Moradabad. Benares. Jubbulpore.
The following confine their Answers to an expression of their Approval of the Code.			
Commissioners	-	-	Meerut. Delhi. Rohilkund.
Civil and Sessions Judge	-	-	Bareilly. Benares.
Magistrates	-	-	Moradabad. Muzaffernugger. Allypore. Futteeah. Ghazeeabad.
The following approve, with of Criticisms and Remarks.			
Commissioners	-	-	Agra. Saugor. Shajehanpore. Mynpoorie. Furruckabad. Agra. Futteeah. Moradabad. Ghazeeabad.
Civil and Sessions Judge	-	-	Panepur. Mynpoorie. Banda.
Magistrates	-	-	Futteeah. Allypore. Saugor.
(Late Officiating)	-	-	Futteeah.
P. Assistants	-	-	Azimgurh.
The following disapprove, and prefers present Regulations.			
Magistrate	-	-	Futteeah.

7. The Opinions of that Portion of the Public which may be conversant with the Subjects of which it treats are admitted to be a material Object to enable the Authorities here and in England, with better Effect than now, "to form a satisfactory Judgment concerning the general Merits" of the Code, and "to determine what Sort of Scrutiny it ought to undergo before being brought into practical Operation," and it is with this express View that the Government invited the Observations and Comments of competent practical Judges in its regard. But it occurs to the Court that the Results of individual and local Experience with Application to such an Object would have been much more effectively elicited, as well as appropriately sought for, had a different Manner and Time been chosen for the Purpose. The Court would have had Witnesses examined and Evidence recorded (in the same Mode as is followed in the Committees of the House of Commons), either before the Commissioners themselves, or, where Distance rendered that impracticable, through the head Authority on the Spot, by means of specific Questions transmitted for Solution by the Framers of the Code, and proposed, not only to dissipate particular Doubts or illustrate individual Points, but with a comprehensive and consistent Reference to the entire Structure of Law which it was intended to create, and of which the Opinions thus elicited should have formed the Basis and preliminary Groundwork. The Court must submit that, in their Opinion, Information so obtained is calculated to be of much higher practical Utility, with reference to the first indispensable Requisite of a Code, Applicability to the peculiar Country for which it is intended, than Opinions sought for, whether critical or emendatory, upon a Production which, if professedly incomplete and open to Alteration and Correction, has still been framed on certain fixed Principles, has assumed a defined Shape and Form, and from the very Elaborateness and Skill which it displays, its Precision of Definitions and Terms, its Copiousness of Illustration and Annotation, and the general Appearance of Study and Finish it thus wears, offers no definable weak Point to a plain practical Man, willing to compare or contrast the Provisions of the Code with the Body of Regulations he has long administered, but wholly unpractised in estimating the relative Merits and Demerits of different Systems of Jurisprudence, who, dazzled with the Pretensions of the Work, perhaps overlooks or suffers to escape its Defects in contemplating its Excellencies, while the Absence of the Code of Procedure, which the Court agree with the Judge of Agra in thinking should have formed an Accompaniment of and not a Sequel to the Code of Law, is calculated to embarrass the Judgment, by leaving Points to Conjecture which ought to be Matters of Certainty, and by withholding from the View what is essential to be studied in connexion with a Law, the Apparatus by means of which it is proposed to bring it into practical Operation.

8. The following are some Observations which the best Consideration the Court have been able to give the Code has suggested.

Chapter II. Punishments.

9. With reference to Clauses 43 and 44, in connexion with the Definition given of the Words "a Person of Asiatic Blood," in Clause 32, Chapter I., the Judge of Seharunpoor has observed, in condemnation of that Definition, that "One whose Grandmother was a Native of Asia is herein (wrongly) presumed to be so physically different from a pure European as to feel little Annoyance from Confinement for Seven Years and upwards in the Gaols and under the Climate of this Country." The Court instruct me to express their Acquiescence in the Reasoning adduced in Pages 3 and 4 of the Notes, in favour of adopting Banishment from the Company's Territories as a Punishment for Offenders of unmixed European Blood; but they remark that some of the Arguments of the Codists in favour of the latter Class of Men appear to have equal Applicability to Persons coming within the Definition of Clause 32, and usually denominated Anglo-Indians, in respect to whose physical Constitution a similar Objection may be taken. Now, assuming the Subjection of such Persons to the same rigorous Imprisonment as is provided for Natives not to be intended, the Result would be an objectionable Inequality of Punishment, unless, indeed, by their Consent, they should enable the Government to commute the Sentence to Banishment from the Territories of the East India Company, under Clause 45. The Court observe, however, that the Two Grades of Imprisonment contemplated by the Code have not been yet described * beyond the general Distribution into "rigorous" and "simple," and perhaps it may be intended in the Rules of Procedure to devise some rigorous Discipline of a Nature adapted to the physical Capabilities of the Class referred to, and which would deprive their compulsory Incarceration in the Gaols of the Country of the Features of Harshness which it now seems to wear.

10. The Judge of Seharanpore remarks that Banishment in Confinement, with Labour, to another Zillah, has been found to be a very effective Punishment, and he recommends its Continuance. The Court observe, that Banishment from one District to another, or more generally Imprisonment in a District other than that wherein the Offender may reside, is a common Sentence, and if not contemplated in the Law of Procedure, they are of opinion that Provision should be made in the Code for its discretionary Infliction. The Court have studied its practical Operation, and they regard it as useful, and especially applicable to particular Offences, as Dacoity, Burglary, Theft, &c., the great Object being in such Cases to remove the Delinquents to a Distance from their Home and Haunts, and cut off the Means of Communication with their Comrades in Crime.

11. On Clause 50 the Court desire me to state, that they fully recognize the Soundness of the Arguments made use of in Pages 5 and 6 of the Notes, in respect to leaving the Amount

Page 2. of Notes.
We do not think
Penal Code
proper Place
describing with
uteness the
ure of either
d of Punish-
it."

Amount of Fine without Limit. The Court observe, that the Subject has evidently engaged the anxious Attention of the Commissioners, and they doubt not the Law of Procedure will contain such precautionary Rules as will suffice to guard against the Operation of the Law in this respect being severely felt, owing to unjust or intemperate Decisions.

12. The Judge of Mynpoorie*, alluding to Clauses 54 and 57, which would "limit the * See Paragraph of this Letter.
 "Imprisonment in lieu of a simple Fine to Seven Days, with the continued Liability of the Offender's Property for its Realization through a Period of Six Years," objects to the Provision as inapplicable to the Circumstances of the Country, and likely to be inoperative, owing to the Devices made use of by Natives for the Purpose of concealing their Property, and consequently evading Payment of the Fine; and the present Rule of fixing a Period of Imprisonment in default of the Liquidation of a Fine is preferred by that Officer. From this Opinion the Court so far dissent that they approve of the Principle proposed to be established by the Code; and though it must be admitted that the Difficulty of realizing Fines is no unreal one, and is much enhanced in this Country by the Circumstance of Property being held undivided, still similar Obstacles are opposed to the Execution of Decrees of Court, and the Court of course suppose that adequate Means will be devised to ensure to the Law due practical Effect in either the Criminal or Civil Code of Procedure.

13. The Court would close their Remarks on this Chapter by observing that, except in Clauses 286 and 290, no Provision appears to be made by the Code for enhanced Punishment being awarded on a Second Conviction for the same Offence; and unless it should be in contemplation to supply such a Rule in the Law of Procedure, the Court would be disposed to regard the Omission as a Defect requiring Amendment, more especially with reference to Theft, an Offence only punishable under the Code by Imprisonment for Three Years.

14. The Court remark of Clauses 64 and 65 that they include a Definition which it appears impracticable to act upon. They believe it will be acknowledged by all who possess much practical Acquaintance with the Proceedings of our Courts, that no such correct Ascertainment of the Age of Natives, particularly of Children, can be made, as the Rule in question contemplates. From Experience in Criminal Trials, the Court are able to state, that, partly from the loose Mode of stating Facts common to the Natives, partly from the Absence of Record or Register, little Reliance can be placed on their Statements in respect to Age, and the Difficulty is increased in the Case of Children, who often look older than they are. The Court would propose to omit Clause 64, and leave out in Clause 65 the Words "above Seven Years of Age and under Twelve." On the same Principle the Court would omit the Specification of Age in Clause 69, modifying the present Wording as follows: "to any Person of sufficient Age to be capable, in the Opinion of the Court, of giving a free and intelligent Consent." The same Omission appears to the Court requisite in Clause 18, and in Clause 298, Chapter XVIII., and in Clause 306 of the same Chapter, where for "any Child under Twelve Years of Age," the Court would substitute, "any Child not having attained sufficient Maturity of Understanding to judge of the Nature of the Act." Also in Clause 354, Chapter XVIII., instead of "any Child under Twelve Years of Age," "any Child of Age so immature as to be incapable of giving free and intelligent Consent."

Chapter III
General Exceptions.

15. In the 6th Instance of the Right of private Defence, described in Clause 76, a Description of wrongful Confinement is adverted to as punishable under the Code with Imprisonment for a Term exceeding One Year. To remove any Doubt or Uncertainty as to the Character of the homogeneous Offence herein described, the Court think the particular Clause or Part of the Code which defines the Penalty in question should be specified.

16. With reference to the Illustration of Clause 106, which, supposing a Person, knowing that another has committed Murder, to assist him in hiding the Body, declares him liable to a Twelfth Part of the Term of Imprisonment provided for Murder, viz., Two Years, the Court are of opinion that the Punishment in a Case such as that supposed is inadequate, and they would be disposed, on general Considerations, to extend the discretionary Limit of Punishment to "One Fourth Part of the longest Term of Imprisonment," &c.

Chapter IV.
Of Abetment

17. Some Remarks on the Assignment of a separate Chapter to the Subject of "Abetment" will find a more appropriate Place at the End of this Letter.

18. The Judge of Seharunpoor notices the Necessity of limiting the Application of the Word "whoever," in Clause 109, and in other Parts of the Code, to Persons being Subjects of the East India Company. Although (the Code being intended for British India) the Applicability of its Provisions to Persons subject to that Government only is of course implied, the Court think (only, however, as far as regards this particular Clause) that every Chance of Misconception might be avoided by a Specification of the Nature described, and they observe that nothing which can be represented by Terms should be left to Inference in a Work of this Kind.

Chapter V.
Of Offences against the State.

19. In Clause 114, wherein the Punishment of Banishment is provided for waging War with allied States, it is observable that no Term of Banishment is specified, as in Clause 113, where Banishment is "for Life or for any Term." It does not appear whether it is left thus general intentionally or from Inadvertence.

20. Clause

Chapter VI.
Offences re-
g to Army
Navy.

20. Clause 119 provides Punishment for the previous Abetment of an "Assault" committed under certain Circumstances. The Court of course understand (adverting to the Terms of Clause 98, Chapter IV.) that if the Assault be attended with Murder or severe Wounding the Person previously aiding, conspiring for, or instigating it will be liable to the same Punishment as any other Person aiding or instigating Murder, Wounding, &c.

21. In the Exception to Clause 124 the Word "Husband" would appear to have been inadvertently inserted.

Chapter VII.
Offences against
Public Tranquillity.

22. Clause 127 does not appear to meet the Offence of Affray, as known in this Country. The Features of many Cases of this Description may be something like the following:—There is uncultivated Land lying adjacent to Two Villages; the Inhabitants of both think they have a Right to it; each Party proceeds to plough it, but aware that Opposition may be encountered, goes armed, yet without any Intention to commit an Assault or Breach of the Peace, but merely with the View of protecting what he deems his Right from possible Aggression. The Affray that occurs in consequence is at present punishable under the General Regulations in respect to both Parties, the Courts for the most part possessing no other Ground for adjudging the Extent of Blame imputable to either than the Admissions or Wounds of particular Parties. The Number of Persons concerned in Affrays of this Description may either exceed or fall short of Twelve, according to Circumstances. As regards the Punishment of such Offences, the Court have seen Cases of aggravated Affray in which Seven or even Fourteen Years Imprisonment was called for. The Judge of Seharunpore has recorded some Remarks on the same Subject which may deserve Notice.

23. The Court are of opinion that "rioting" of the Description mentioned in Clauses 132 and 133 should be excepted from any Definition or Specification regarding the Number of Persons which constitute the Offence.

Chapter VIII.
The Abuse of
Powers of
Public Servants.

24. The Court are disposed to question whether the Punishment in Clause 141 would be appropriate in all Cases, while they think in some it might be quite inadequate.

25. Clause 142 refers to a Judge pronouncing a Decision which "he knows to be unjust." But by what Means is his Conviction of the Injustice of the Order to be discovered? A Decision may be diametrically opposed to Justice, and yet the Functionary passing it may aver (and it might be difficult to rebut the Assertion) his Ignorance that it was so.

26. With reference to the Punishment provided by Clauses 143 and 144, as far as Imprisonment forms Part of it, the Court suppose proper Precautions will be adopted in the Law of Procedure to prevent any public Officer sustaining Degradation therefrom who might ultimately clear himself and be restored to Confidence. Otherwise the Penalty in question might be regarded as derogatory, and open to Objection.

27. It occurs to the Court that the Punishment of Imprisonment in such Cases as those contemplated by Clauses 147, 148, and 170 (in Chapter IX.) is generally unsuitable, and they would be disposed to prefer the Substitution of Fine, or Imprisonment on Failure to pay. As regards Imprisonment, the Law of Procedure will of course make due Provision for the Option of Appeal being given.

Chapter IX.
Contempts of
lawful Autho-
rity of public
servants.

28. The Judge of Seharunpore has suggested that "Merchants Accounts," when required to be produced in a Court of Justice as Evidence in a Case, might advantageously be specified, as indicated in Clause 156. The Court observe, however, that the Clause does not profess to define *what* Documents shall be legally demandable, but to declare the Penalty of their Nonproduction; and the Code of Procedure, it is presumed, will determine what are the Documents the Production of which the Law requires; but unless Account Books fall within the Definition of "Documents," a Provision seems wanting for the Punishment of Persons refusing to produce in a Court of Justice such Account Books as they are bound to produce by Law.

Chapter X.
Offences against
Public Justice.

29. Adverting to the Explanations appended to Clause 188, regarding what constitutes a "judicial Proceeding," or a Stage thereof, the Court of course conclude that due Consideration will be had in the Law of Procedure to the Case of Charges against the public Conduct of European Officers, with a view to save their Characters from being attacked with Impunity on insufficient Grounds. It is also presumed that the Code of Procedure will declare the preliminary Investigation to be held by Order of Government for ascertaining whether Grounds exist for bringing to Trial public Officers to fall within the Definition of a "Judicial Proceeding," and thus bring a Witness giving false Evidence before the Body holding such Inquiry within the Meaning of the Clause.

Paragraph 4 of
Letter.

30. The Judge of Furruckabad* has adduced a Case of actual and recent Occurrence, in which, and in Cases of a similar Kind, that Officer is of opinion that the Punishment provided by Clause 191 would operate with undue Severity. The Instance alluded to by him regards the fabrication of false Evidence to sustain a good Case from Fear of a Deficiency of Judicial Proof, such as was apparently done with respect to the Italian Witnesses in the Queen's Trial. The Court think that the Judge of Furruckabad's Argument has some Force, as regards this Country, where more Latitude must necessarily be given; and they would propose to meet the Difficulty by the Insertion of the Word "*innocent*," viz., "that he may thereby cause any innocent Person," &c.

31. It is concluded that the Rules of Procedure will include Provisions intended, with Advertence to Clause 196, to meet the Contingency of conflicting Decision being passed by Civil

Civil and Criminal Courts, or of Suits for the same Matter being pending in the Civil and Criminal Courts at the same Time.

32. The Judge of Seharunpoor has observed that Clauses 203 and 204 do not make any Provision for the Punishment of Persons who may return from Transportation for Life; but it occurs to the Court that such Provision may have been deemed superfluous, as in the event of Re-transportation no legal Enactment would be needed to meet the Exigency, and in the event of Commutation to perpetual Imprisonment or other Punishment being deemed proper, Clause 42, Chapter II., would appear sufficient.

33. The Court think the Punishment prescribed by Clause 257 inadequate as regards the extreme Period of Imprisonment provided, viz., Six Months, the Extension of which to a Term of Two Years they would consider proper.

34. If the inherent Meaning of "Adulteration," or corrupting by the Admixture of base Ingredients, include the *Intention* to deceive, that is, if the Word is usable only "in malum partem," Clause 259 and others in which it is introduced appear correct; otherwise the Court would prefix to it the Word "intentionally."

35. Clause 282 prescribes Punishment for Persons doing certain Acts with the deliberate Intention of "wounding" the religious Feelings of any One. Adverting to the Com-

Chapter XIV
Of Offences affecting public Health &c.

Chapter XV.
Offences relating to Religion and Caste.

* "We do not conceive that any Person can be justified in wounding with deliberate intention the religious Feelings of his Neighbours by Words, Gesture, or Exhibition, a warm Expression dropped in the Heat of Controversy, or an Argument urged by a Person, not for the Purpose of insulting and annoying the Professors of a different Creed, but in good Faith, for the Purpose of vindicating his own, will not fall under the Definition contained in this Clause."

missioners Remarks in Page 50 of the Notes, quoted in the Margin*, the Court would prefer the Phrase "insulting" to "wounding," or would prefix to "wounding" the Word "wantonly." A Missionary intent on making Converts to the Christian Religion must necessarily, if he be in earnest, use such Arguments as are calculated to "wound" the religious Feel-

ings of his Hearers, without meaning wantonly to insult them.

36. Clause 284 makes Provision for Cases in which a Person, "with the Intention of causing another to lose Caste, commits any Assault which causes him to lose Caste, or induces him to do ignorantly anything whereby he incurs Loss of Caste." The Court would, however, prefer to substitute these Words, "Whoever, with the Intention of hurting any Person's religious Feelings, assaults that Person, or induces him to do ignorantly that which he would not otherwise have done, by which Means his religious Feelings are hurt," &c. This, the Court observe, would include Persons of other religious Persuasions besides Hindoos, to whom alone the Expression "Caste" is strictly speaking applicable, Moosulmans having properly none. It also appears to the Court desirable to avoid the Use of the Term "Caste," which would include the Necessity of defining what constitutes Caste, and what its Violation, and would involve Reference to Judicial Precedents, and Uncertainty even with that Guide. The whole Object of the Law, too, may be sufficiently attained without it.

37. Clause 285. The Court would alter thus, "Whoever, with the Intention of hurting the religious Feelings of any Person, causes Food belonging to that Person to be in a State in which such Person, if aware of it, would not willingly use it as Food, shall be," &c. This Alteration, besides avoiding the Use of "Caste," would meet, the Court think, every supposable Case; but the Clause, as it stands, is unsuceptible of Application to the Case of converted Moosulmans (such as exist in Mymensingh), who, though they have nominally abjured Hindooism, still retain some Prejudices of that Religion, especially regarding Beef, and in respect to whom the Phrase "cannot use as Food" would not be strictly appropriate, as their original Prejudices would still influence them, though, agreeably to their new Creed, they ought to discard all Scruples.

38. Upon a similar Principle, for the Words "in respect of his Caste," at the Bottom of Page 124 (Clause 469, Chapter XXV.), the Court would substitute, "in respect of his Religion," or "in respect of his religious Prejudices;" and they would alter the Heading of the Chapter as follows: "Of Offences relating to Religion and religious Prejudices."

39. In Clauses 287 and the Two following, after the Words "East India Company" the Court would suggest the Introduction of the following: "or whoever, being a Foreigner, required by Law to make such Report." The Court observe that an unrestricted Liberty of Entrance to Foreigners might have most pernicious Effects.

Chapter XV
Of illegal Entrance into and Residence in the Territory of the East India Company.

40. I am directed to state that Clauses 302 and 303, prescribing the Punishment awardable for voluntary culpable Homicide "by Consent" and "in Defence" appear to provide a Penalty of a considerably heavier Description than our Courts have been accustomed to inflict for the same Sort of Offences; but the Court would be unwilling to designate such Punishment as unduly severe, without having at the same Time before them the Code of Procedure.

Chapter XV
Of Offences affecting the Human Body.

41. Referring to the Illustration of Clause 305, the Punishment provided for such an Offence as that described does not appear adequate. The Court think it should render a Person liable to Imprisonment for Life, to which they would recommend it should be extended.

42. Adverting to the Explanation on Clause 359, in respect to what constitutes the Act necessary to the Offence of Rape, the Court are of opinion that if Clause 346 contemplates Provision for the Punishment of all Acts short of Penetration, the Amount of Punishment provided is inadequate.

43. The Court do not perceive why the Punishment prescribed for the Offences indicated in Clause 350 should be less than that provided for the Offence in 349, with Advertence to the relative Character of those Offences.

44. In Clause 357, which contains a Specification of the intended or probable consequences of "Kidnapping," the Court would include in the Enumeration, "or the dedicating of that Person to Prostitution." The Court also observe, that Cases are of common Occurrence in this Country in which Children are left at Fairs, or abandoned in Times of Famine and Distress, and Provision is required for the Punishment of Persons appropriating such Children with evil Intentions, none existing under the present Law.

45. As a general Remark referable to this Chapter, the Court would observe, that the Code does not seem to make Provision for the Offence of administering poisonous or deleterious Drugs in Victuals or Drink, with the view to stupify and rob Persons, reckless whether Death may be the Consequence of the Act or not. Such, however, is a common Crime in the North-western Provinces; and the Court have recently seen Cases which induce them to suspect that it is practised as a System by a Class of itinerant Poisoners. The Court would propose to punish the Crime of administering Drugs or other Substances which, if taken in sufficient Quantity, is calculated to destroy Life, by declaring Persons convicted of it liable to Imprisonment for Life or Transportation.

46. "Duelling," the Court remark, is not specifically alluded to in the Code, but they conclude it is provided for in Clauses 294 and 320, accordingly as Death or wounding only may have ensued from the Act.

Chapter XIX.
Offences against
property.

47. Clause 365 provides the proper Punishment for Theft committed under certain Circumstances, viz., "within any Building, Tent, or Vessel, which Building, Tent, or Vessel is used as a Human Dwelling, or within any Building used for the Custody of Property." In the latter Part of the above Sentence the Court do not perceive why "Tent or Vessel" should not be also included, since they may be likewise used as Receptacles for the Custody of Property. They would insert after "Building" a Repetition of the Words "Tent or Vessel."

48. Clause 376 fixes the Number of Persons necessary to constitute the Crime of Dacoitee at Six or more. The Court, however, consider this Definition as open to Objection, as Dacoitee might often be committed by a less Number; and even when the Number of Persons present aiding and abetting were really in excess of Six, it might frequently be difficult to prove the Fact.

49. Adverting to Clause 387, which prescribes Imprisonment of either Description extending to Three Years, or Fine, or both, for "Criminal Breach of Trust," the Court would wish that Provision should be made for a severer Punishment being awardable in certain Instances of common Occurrence in the Mofussil, such as that of confidential Persons, employed by Bankers to convey Remittances in Specie from One Town to another, appropriating the Money to their own Use, and alleging that it has been taken from them by Robbers. This Mode of sending Remittances is very general, and the Offence is of so serious a Complexion as to demand, the Court think, a heavier Penalty than that contemplated by the Code.

50. The Punishment for fraudulently receiving stolen Property, knowing it to be such, provided by Clause 390, does not appear to the Court sufficient to meet Cases in which the stolen Property may have been obtained by Highway Robbery, or the Theft attended with Murder or Poisoning, in respect to which they are of opinion a higher Measure of Punishment would be required.

51. With reference to Clauses 413, 414, the Court do not see any Notice of Occasions in which Death may be caused in the Commission of Mischief by Fire, though the proper Punishment is perhaps provided by some other Clause in the Chapter appertaining to "Offences against the Human Body," and might not be appropriate in the present Chapter, which concerns "Property."

52. It seems to the Court that as in Clause 414 the Number of "not less than Five" is fixed in regard to Buildings the Destruction of which by Fire is made liable to the increased Punishment of Transportation for Life, or rigorous Imprisonment extending to Life, and not less than Seven Years, &c., so in Clause 415 also a corresponding Rule should be made applicable to the Case of decked Vessels, by providing a Clause of similar Purport, "mutatis mutandis," to Clause 414.

53. The Court are inclined to consider the Punishment provided by Clause 452 insufficient.

54. It appears to the Court that the Imprisonment contemplated by Clause 460 as of either Description "might, with reference to the Character of the Offence, be restricted to simple."

55. As regards this Subject the Court have not omitted to give due Weight to the Remarks recorded by the Commissioners in the Notes (Page 88, last Paragraph,) in respect to the Abandonment by Domestics of Service, but they still think some Provision might justly be made to meet the Contingency of Servants quitting their Master's Service without Notice while on a March or during a Journey. Their "sudden Departure" on such Occasion must almost necessarily involve much Embarrassment and Inconvenience.

56. With reference to the Arguments of the Commissioners, and to the Difficulty, so clearly set forth in the Notes, the Court have no Objection to the Exclusion of Penal Provisions for Adultery from the Code, which does not, however, appear to contemplate any

Chapter XX.
Offences re-
g to Docu-
its.
Chapter XXII.
Illegal Pursuit
Legal Rights.
Chapter XXIII.
Criminal Breach
Contract of
Service.

Chapter XXIV.
Offences relat-
to Marriage.

any Punishment for enticing away Females, married or unmarried, from their legal Protectors, and that seems to them a Defect. The Court believe that Regulation VII. of 1819 has been found in Practice to be a very useful Enactment, and well suited to the Feelings of the lower Classes of the Community, who, in Cases of Wives leaving their Husbands, can by its Provisions get the Crime of Seduction punished without their Dishonour being brought prominently forward, the Female being induced by fair Promises, on the Seducer being sent to Gaol, to return, and domestic Harmony restored.

57. Adverting, also, to another Object of the same Regulation, the Court remark that the Code does not appear to contemplate the Provision of legal Penalties for the Non-maintenance by Persons of those who are entitled from them to Support.

58. Much has been said and written concerning the Difficulty of accomplishing the necessary Task of translating the Code into the Native Languages; an Undertaking upon the successful Execution of which its whole practical Utility will of course depend. The Point is adverted to by the Commissioners in the closing Paragraph of their Preface, with apparent Appreciation of the Difficulty, yet with an Expression of their Reliance on the Existence of adequate Means to encounter and overcome it. The Court cannot, however, conceal from themselves the Apprehension, that the greatest Obstacle may be found to be One which no Measure of Qualification for the Task (as far as regards the mere Ability of making a correct and idiomatic Translation) will suffice to cope with, and to consist in the Over-precision of Terms in some of the Definitions and occasional Refinements of Phraseology, to express which with Correctness the Genius of the Native Language does not seem capable.

59. The Court would also anticipate little, save Error, Embarrassment, and Injustice, were the Code (however well translated) put into the Hands of Natives or even European Functionaries of limited Experience, for the Purpose of their acting on its Provisions, unaccompanied by some sort of Key, which would perhaps be best supplied by an alphabetical List of the various Offences and Grades of Offences, intended to be met by its Provisions, with a Specification opposite to each of the Extent and Nature of Punishment which could be awarded for it under the Code, and a Reference to the particular Clause or Clauses according to which the Punishment is awardable. With such a Guide, the Court believe that the Code would be found easier of Operation than the present Collection of Regulations; but without the Help supplied by it, Provisions would be liable to be overlooked, owing to the Necessity of constant Reference from one Part of the Code to another, especially in respect to the Abatement of Offences, the Assignment to which Subject of a separate and independent Chapter has a *prima facie* Appearance of Complexity which had been better, if possible, avoided.

60. The Court have now concluded such a brief Survey of the Penal Code in a practical point of view as the Opportunities at their command have permitted them to take; and, agreeing with a distinguished Member of the Commission which framed it in respect to the Intercoherence of its several Parts, and the consequent Obligation of studying it as an entire Work (for they have repeatedly imagined Omissions or Defects which, on consideration, have appeared to be provided for), as well as in regard to the Necessity of an elaborate and lengthened Study of the Production, in order to do it complete Justice, the Court must regret that Circumstances should have put it beyond their Power to take a fuller View of the Subject than is comprehended in their present Remarks, less worthy of Submission, they are sensible, than the Importance of the Question would otherwise appear to demand.

"The Penal Code was a Document in which all the Parts of it hung together. If the Missionaries had studied it attentively, which indeed he could not expect them to do, as it involved a Labour of some Months, they would see the Answer to the Objection," &c.

"The Code was a Document extending to 100 Folio Pages, every Word of which had a bearing upon every other, and he could not expect that the Missionaries should have thoroughly mastered it."

Extract from Mr. Macaulay's Speech at Edinburgh in answer to Objections of Mr. Russell.

I have, &c.

(Signed) M. SMITH,

Officiating Register.

E. PEPLOE SMITH Esq. to H. B. HARRINGTON Esq.

(No. 1.)

Commissioner's Office, 5th Division, Camp Tekhma,
12th January 1839.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Circular Letter, No. 383, dated 24th March last, with its Annexures, on the Subject of the proposed Penal Code, prepared by the Indian Law Commissioners, and beg to apologize for having so long delayed replying to the same; but the Fact is, that my Time is so entirely engrossed in the laborious and important Duties of my own Office (which being essentially an English one admits of no Holidays, Sundays excepted,) as to deprive me of the Power of making myself Master of the Subject, without which it would be little to the Purpose to venture an Opinion on so important and comprehensive a Body of Laws.

2. The Court, I am fain to hope, have never found me wanting in the Desire to comply with their Wishes to the best of my poor Ability, and it ill accords with my own Feelings to plead Want of Leisure for the Performance of any Duty; but on the present Occasion

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I am

I am reluctantly compelled to throw myself upon the Court's Indulgence, rather than attempt, by putting on Record a few crude and ill-digested Remarks, to criticise a Work the framing of which has occupied the undivided Attention of some of the most talented Men in the Country.

I have, &c.
(Signed) E. P. SMITH,
Acting Commissioner.

W. O. KEDEN Esq. to H. B. HARRINGTON Esq.

(No. 88.)

Zillah Moradabad, Sessions Judge's Office,
11th December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letter, No. 1,507, of the 27th ult., calling for a Reply to your Circular Letter, No. 283, of the 24th March last.

The heavy Duties of this Jurisdiction prevented me from perusing the proposed Penal Code with that Care and Attention required to enable me to suggest any Amendment. I therefore did not consider it expedient to submit any Remarks.

From the Tenor of the Second Paragraph of your Letter of the 24th March, I understood the Court only required a speedy Reply, should I have had Suggestions to offer on the Points noticed in the proposed Code; hence the Cause of the apparent Delay.

I have, &c.
(Signed) W. O. KEDEN,
Officiating Session Judge.

A. P. CURRIE Esq. to H. B. HARRINGTON Esq.

(No. 2.)

Zillah Etawah, Judge's Office,
10th January 1839.

Sir,

IN reply to your Letters under Date the 24th March and 27th November last, I have the Honour to state, that, after a Perusal of the proposed Penal Code, no Suggestions occur to me on the Points noticed therein.

I have, &c.
(Signed) A. P. CURRIE,
Officiating Judge.

J. DUNSMURE Esq. to H. B. HARRINGTON Esq.

(No. 109.)

Dewanny Court, Zillah Allahabad,
30th November 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letter, No. 383, dated the 24th of March last, and of its annexed Enclosures, regarding the proposed Penal Code.

2. I beg to state that I have no Suggestions to offer which I could in any way deem an Improvement of the proposed Code.

I have, &c.
(Signed) J. DUNSMURE, Judge.

G. P. THOMPSON Esq. to H. B. HARRINGTON Esq.

(No. 6.)

Dewanee Adawlut, Zillah Goruckpoor,
8th January 1839.

Sir,

As from the Tenor of the Court's Circular, No. 383, under Date the 24th of March last, and of Mr. Mangle's Letter which was annexed, it appears optional with the Officers of Government to offer or not any Suggestions on the Penal Code, I would under this Impression beg to be excused from giving any Opinion in the Matter, first, because to offer an Opinion upon so costly and laborious a Work considerable Time must be required, and, secondly, because I have not that Time to afford without Detriment to the Duties of my Office.

2. I should have stated thus much before, but until I received yours of the 27th of November I was not aware that an Answer was requisite.

I have, &c.
(Signed) G. P. THOMPSON, Judge.

D. B. MORRIESON Esq. to H. B. HARRINGTON Esq.

(No. 115.)

Zillah Jounpoor,
29th December 1838.

Sir,

IN reply to your Letters, Nos. 383 and 1,514, of the 24th March and 27th November last, requiring my Opinion of the proposed new Criminal Code, I beg leave to assure the Court that the Duties of my Office have not afforded me Leisure for such a Task as the important Volume transmitted with your First Letter must necessarily entail upon any one who would undertake to examine and record an Opinion upon it; I have moreover the greatest Diffidence in my own Qualifications to judge of such grave Matters, or to offer an Opinion which would be worth the Acceptance of the superior Authorities.

2. As Persons of far greater Experience, Acquirements, and Knowledge than I can flatter myself I possess have been applied to for their Sentiments, I earnestly trust that I may be held excused from intruding my Opinions, which, while the Preparation of them will interfere materially with the Discharge of more pressing Duties, would most probably in the End be superfluous.

I have, &c.
(Signed) D. B. MORRIESON,
Sessions Judge.

R. BELL Esq. to H. B. HARRINGTON Esq.

(No. 301.)

Delhic, Magistrate's Office,
20th December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letter, No. 1,543, dated the 27th ultimo; and in reply to request that you will express to the Court my Regret at having been unable hitherto to obey the Order contained in their Circular dated the 24th of March last.

2. I received charge of this District on the 1st of July, ever since which Date my Time has been in a great measure occupied with important Duties intrusted to me by the Government, in addition to the current Business of the Magistrates and Collector's Office. I have been unable to do more than glance hastily over a few of the Laws which are contained in the Code; and it is impossible for me to record any Opinion as to the Merits of the whole until I shall have had Leisure to peruse and consider it with that Care which so important a Question demands.

I have, &c.
(Signed) R. BELL, Magistrate.

F. P. BULLER Esq. to H. B. HARRINGTON Esq.

(No. 6.)

Shajchanpoor, Magistrate's Office, Camp Pulum,
14th December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letter, No. 1,528, dated the 27th ultimo; and in reply to state, that on referring to your Letter, No. 383, dated the 24th March last, I do not find that I was called on for any Reply to the same, but had it left to my Option to offer any Suggestions which might occur to me after a careful Perusal of the proposed Penal Code.

2. It seems to me that Experience alone can decide whether the Code is based on sound Principles, and I confess I have not yet given it that Consideration, nor am I able to do so in the midst of my present Duties on the Oudh Frontier, so as to qualify myself for the Task of discussing its probable Merits in detail; and perhaps what I could say on the Subject will have been already suggested to the Court by other more experienced Magistrates than myself.

I have, &c.
(Signed) F. P. BULLER,
Officiating Magistrate.

J. CUMINE Esq. to H. B. HARRINGTON Esq.

(No. 10.)

Etawah, Magistrate's Office,
29th January 1839.

Sir,

IN reply to your Letters, Nos. 383, of 24th March 1838, and 1,526, of 27th November 1838, I have the Honour to state, that from the slight Examination that I have had Leisure to make of the Penal Code, provided the Necessity of so great and general a Change be unavoidable, in order to attain the Object, a Code applicable to all Classes, no Suggestions

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tions occur to me regarding any Part of the proposed Code of Laws which would deserve the Attention of the Court.

I have, &c.
(Signed) J. CUMINE, Magistrate.

J. C. WILSON Esq. to H. B. HARRINGTON Esq.

(No. 3.)

Zilla Cawnpore, Magistrate's Office,
11th January 1839.

Sir,

IN reply to your Letters, under Dates the 24th March 1838, No. 383, and, 27th November 1838, No. 1,534, I regret to be compelled to state my Inability to comply with the Requisition therein contained, in the Manner it ought to be complied with.

2. It would be an easy Matter for me to fix on One Chapter of the Penal Code, and having made some Comments thereon, to forward those Comments to you; but the Court requires an Essay on the whole Code from Beginning to End, and such an Essay, unless I altogether neglected my very responsible and harassing Duties for a Week, and gave to it my sole undivided Attention during the whole of that Period, I could not write.

3. Trusting that the above will be considered a sufficient and valid Excuse,

I have, &c.
(Signed) J. C. WILSON,
Officiating Magistrate.

J. J. W. TAUNTON Esq. to H. B. HARRINGTON Esq.

(No. 393.)

Humeerpoor, Magistrate's Office,
6th December 1838.

Sir,

In reply to your Letter, No. 1,536, of the 27th ultimo, I do myself the Honour of informing you, that I am not prepared to make any Remarks or offer any Suggestions on the proposed Penal Code, a Copy of which accompanied your Circular of the 24th March last.

I have, &c.
(Signed) J. J. W. TAUNTON, Magistrate.

R. MONTGOMERY Esq. to H. B. HARRINGTON Esq.

(No. 442.)

Magistrate's Office, Zillah Allahabad,
21st December 1838.

Sir,

IN reply to your Letter of the 27th ultimo, requesting my Opinion on the proposed Penal Code, I have the Honour to inform you, that my numerous Duties prevent me giving the Attention requisite to enter upon so important a Subject, and that I am not therefore prepared to give any Opinion thereon.

I have, &c.
(Signed) R. MONTGOMERY,
Officiating Magistrate.

W. H. WOODCOCK Esq. to H. B. HARRINGTON Esq.

(No. 501.)

Mirzapoor, Magistrate's Office,
7th December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of the Court's Orders, communicated in their Circular Letter, No. 383, dated the 24th March, requesting my Opinion on the proposed Penal Code; and to state in reply, that the Subject has not received that Consideration which would warrant my giving an Opinion on the Subject.

I have, &c.
(Signed) W. H. WOODCOCK, Magistrate.

F. R. DAVIDSON Esq. to H. B. HARRINGTON Esq.

(No. 563.)

Magistrate's Office, City of Benares,
11th December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letters of the 24th March and the 27th ultimo, requesting an Opinion on the proposed Penal Code.

My

My Time is so constantly occupied by the current Business of the Magistrate's Office and my other Duties, that I have been unable to devote any Part of it to the important Subject under Consideration ; and as any Opinion formed and offered under these Circumstances would be crude and without Value, I trust that with reference to Paragraph 3. of Mr. Secretary Mangles' Letter, and Paragraph 2. of yours of the 24th March, I may be excused from entering upon the Question.

I have, &c.
(Signed) F. R. DAVIDSON,
Officiating Magistrate.

D. F. M'LEOD Esq. to H. B. HARRINGTON Esq.

(No. 222.)

Saugor, Office of Principal Assistant Commissioner,
18th January 1839.

Sir,

I HAVE the Honour to acknowledge your Letters, No. 383 of the 24th March, and No. 1,548 of the 27th November last, requiring from me Suggestions in regard to the proposed Code prepared and published by the Law Commissioners.

2. From the Tenor of the First of those Letters I had considered the Transmission of the Suggestions in question to be quite optional ; and now that I have been again called upon for them I am unable to offer any, in addition to those given by me, on the Requisition of the Commissioners, on several specific Subjects, previous to the Preparation of the Code.

3 I would, however, repeat the Opinion which I then expressed, that to consider Adultery exclusively a civil Offence is calculated, in as far as Courts can have an Influence on the Morals of a People, to be productive of Injury, and opposed at the same Time to the Feelings and Sentiments of the most respectable Part of the Community.

4. Having returned from a Nine Months Leave only in the Month of May, to take Charge of this District, the Duties of which were new to me, I regret that the Press of Matters demanding my Attention has not allowed of my reading the Code with the Attention requisite, before replying satisfactorily to your Requisition ; and the above is the only Point which has so prominently engaged my Attention as to induce me to offer a Remark

I have, &c.
(Signed) D. F. M'LEOD,
Officiating Principal Assistant Commissioner

G. F. FRANCO Esq. to H. B. HARRINGTON Esq.

(No. 268.)

Commissioner's Office, First Division,
8th December 1838.

Sir,

IN reply to your Circular Letter, No. 383 of the 24th March last, I have the Honour to state my Opinion that the new Penal Code is admirably adapted for the Administration of Justice in India, as far as a Code can possibly be expected to effect that Object.

I have, &c.
(Signed) G. F. FRANCO,
Officiating Commissioner

T. T. METCALFE Esq. to H. B. HARRINGTON Esq.

(No. 48.)

Delhee, Commissioner's Office,
7th January 1839.

Sir,

IN your Circular, No. 383, under Date the 24th March last, I have been directed, in common with others, to submit any Suggestions which may occur to me relative to the proposed Penal Code prepared by the Indian Law Commissioners.

2. In reply, I have the Honour to state, that after a careful and attentive Perusal of the Document, I am not sensible of any Defects requiring particular Notice ; and indeed, considering the high Authority from whence the Code has emanated, any individual Functionary must feel exceedingly diffident in recording an Opinion having for its Object the Emendation of a Law the practical Effects of which have not yet been felt.

3. In one respect, however, all will concur, for all must acknowledge the Superiority which the contemplated Code, from its condensed Form, possesses over the voluminous Record now in force for the Administration of Criminal Justice. Of its intrinsic Merits it would be premature to form a Judgment until it has borne the Test of Experience.

I have, &c.
(Signed) T. T. METCALFE,
Commissioner.

J. DAVIDSON Esq. to H. B. HARRINGTON Esq.

(No. 27.)

Commissioner's Office, 3d or Bareilly Division, Camp Nelitour,
21st December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Circular Orders, No. 383 of the 24th March, and No. 1,495 of the 27th ultimo, directing me to submit my Sentiments upon the Points noticed in Mr. Secretary Mangles' Letter of 12th February 1838, regarding the proposed Penal Code prepared by the Indian Law Commissioners.

2. I have read the proposed Code with Attention, in conjunction with the Body of Criminal Law at present in force, and have attempted, as much as the little Time at my Disposal from urgent Duties would permit, to test its Provisions by Comparison with the social Circumstances of their intended Application; but the Survey has been of too limited a Nature to warrant my forming very definite Conclusions on the Subject.

It appears to me, however, in the best Judgment I can form, that the Substitution of the proposed Code for our Regulations, than which it is at least no less complete and intelligible, and much easier of Reference, would be attended with little Inconvenience as regards daily Practice; and with reference to its satisfactory Development of Principles, Exactitude of Definition, and clear Division of Subjects, that it would prove a highly instructive Manual of Criminal Jurisprudence, and a more certain Standard for administering its Law.

I have, &c.

(Signed) J. DAVIDSON,
Officiating Commissioner, Circuit.

W. COWELL Esq. to H. B. HARRINGTON Esq.

(No. 923.)

Dewanny Adawlut, Zillah Bareilly,
31st December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Circular Letter (No. 383), dated the 24th March last, and of a subsequent Communication (No. 1,506) of the 27th ultimo.

2. I am sorry to say that Want of Leisure has prevented me from perusing the Penal Code prepared by the Indian Law Commissioners with that careful Attention requisite to form an Opinion on the Merits of a Compilation of so important a Nature; but from a cursory Review I can find nothing to object to a Work intended for the Guidance of the Legislative Functionaries of British India.

I have, &c.

(Signed) WM. COWELL, Judge.

G. MAINWARING Esq. to H. B. HARRINGTON Esq.

(No. 233.)

Office of Sessions Judge, City of Benares,
6th December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letter, No. 383, under Date the 24th of March last, with its Accompaniments, regarding the proposed Penal Code prepared by the Indian Law Commissioners.

2. Considering the very little Time I have been enabled to spare from my usual official Avocations to devote to the Study of so important a Work, I cannot divest myself of the Feeling that it would be extremely presumptuous in me to offer anything like Criticism on the particular Merits or Demerits of a Code carefully compiled by Individuals so eminently qualified for the Task. I beg, however, to state, for the Information of the Court, that a very attentive Perusal of the proposed Penal Code has led me to the Conclusion that the Adoption of it as Law, as it now is, would be a very decided Improvement on the existing System, and that with reference to the Constitution and Usages of this Country, it is well adapted for general Practice in the Administration of Criminal Justice.

I have, &c.

(Signed) G. MAINWARING, Sessions Judge.

G. BLUNT Esq. to H. B. HARRINGTON Esq.

No. 17.)

Moradabad, S. Division, Magistracy,
18th December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letter calling for a Reply to your Circular Letter, No. 383 of the 24th March last, regarding the new Penal Code.

2. As from the Tenor of the 2d Paragraph of your Letter, I considered that a Reply was only required in the Event of my wishing to offer any Opinion on the Code, I did not immediately reply to it.

3. I have perused the Penal Code, but my official Duties have been too heavy to allow of my giving it that Care and Attention which I deemed requisite, before I could offer to pronounce

pronounce any Opinion upon it. As far as I am competent of judging, from perusing it, the Code appears based on the most enlightened Principles, and the practical Application of it would confer much Benefit to the Country.

I have, &c.
(Signed) GEO. BLUNT,
Officiating Magistrate.

(No. 171.) W. H. DEANE Esq. to H. B. HARRINGTON Esq.

Moozuffernuggur Magistracy,
17th December 1838.

Sir,

IN reply to your Letter, No. 1,520 of the 27th ultimo, I have the Honour to state, for the Information of the Court of Sudder Nizamut Adawlut, that I have diligently perused the proposed Penal Code, and hesitate not to offer it as my Opinion that the Operation of the proposed Law will be attended with the greatest Advantages to all Classes of Society in India.

Without the fictitious and ingenious Nonsense of the Law of England, the new Penal Code appears to me to be based upon equally sound Principles of substantial Justice.

I have, &c.
(Signed) W. H. DEANE, Magistrate.

(No. 7.) G. F. HARVEY Esq. to H. B. HARRINGTON Esq.

Allyghur Magistrate's Office,
7th December 1838.

Sir,

IN reply to your Letter, No. 1,521 of the 27th ultimo, I have the Honour to say, that the Delay which has occurred in acknowledging your previous Circular Letter, No. 383, under Date the 24th March last, has arisen from the Supposition that Opinions upon the proposed Penal Code were not urgently required, but that it was left to the Magistrates to furnish them as Leisure and Opportunity occurred to form them. I regret to say that this Leisure has not occurred to me.

During many Periods of the past Year I have been performing the entire Duties of both Offices of Magistrate and Collector of this District (during the Illness or Absence of the Joint Magistrate), I am therefore unable to submit Opinions in detail. I have however, perused with Attention the proposed Code, and noted Points for further Remark.

I incline to the Belief that if immediately enacted into Law it would have a beneficial Effect upon the Administration of Criminal Justice in India.

To furnish detailed Remarks upon every Chapter would, I conceive, occupy more of the Time of the Magistrates than can be fairly accorded, with Consideration for their other Duties. At the same Time, if their Attention was called to the Discussion of any particular Chapter or Portion of it, and they were furnished with Queries, the Answers to which would condense their Opinions, or if there are any particular Points upon which Opinions are required, I conceive that much Detail would be got rid of, and Time saved.

There is much Discretion left to each Court in Matters of Punishment, and I am of opinion (considering the Principles and Definitions to be for the most part undeniable) that there are no Defects the non-supplying of which would have injurious Consequences to any Party likely to come under the Influence of this Enactment, and which might not more efficiently be supplied as Occasion for discussing them occurred during the working of the Code.

I will endeavour to prepare a few Remarks upon particular Points shortly. At present I can only plead the Fact, that my Time is entirely officially occupied, and submit, in reply to the Court's Call, my Opinion as a whole in favour of the proposed Penal Code, Copy of which accompanied your Letter.

I have, &c.
(Signed) G. F. HARVEY,
Magistrate

F. H. ROBINSON Esq. to the REGISTER to the NIZAMUT ADAWLUT, ALLAHABAD
(Judicial, No. 200.)

Sir,

Furruckabad Magistracy, 18th December 1838

I HAVE the Honour to state, with reference to your Circular on the Subject of the Criminal Code, that I have no Remarks to offer worthy the Attention of the Sudder, unless an Expression of a very high Admiration of that Compilation may be taken to be so.

I have, &c.
(Signed) F. H. ROBINSON,
Magistrate

E. WILMOT Esq. to H. B. HARRINGTON Esq.

(No. 53.)

Zillah Ghazeeppoor Magistrate's Court,
4th February 1839.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letter, No. 1,541 of the 27th November 1838, calling my Attention to a Circular Order, No. 383 of the 24th March 1838, requesting my Opinion on the proposed Penal Code.

From the Time this Report has been due, and from my having so very lately joined this District, I hope I shall now be excused from entering into any minute Detail and Opinion on its several Provisions, as the doing so would necessarily take much more Time than could probably be allowed with reference to the Time the Report has been due, and also more Experience than I can pretend to possess, with any Hope of making Suggestions which would not have already occurred to others much better adapted than myself to such a Work.

I am of opinion, however, that little Difficulty would be experienced in carrying this Code into immediate Operation, and as a Book of Reference, at any rate, it must at all Times prove most useful.

When actually in operation, there would, no doubt, be Points requiring a Reference ; but these would present themselves with much greater Force at that Time than they could at present, and with a better Hope of Remedy being applied. I observe a Provision for this is made in the Preface Report submitted by the Law Commissioners.

The Illustrations under each Head are very minute and clear, and cannot fail of affording much Assistance in Cases of Difficulty ; and, although at first it would perhaps give more Trouble, I feel convinced that after a short Trial the proposed Code would be found to afford a better Rule of Guidance and Practice than our present Regulations.

I have, &c.

(Signed) E. WILMOT,
Officiating Magistrate.

R. N. C. HAMILTON Esq. to H. B. HARRINGTON Esq.

(No. 106, Executive.)

Commissioners Office, 2d or Agrah Division,
12th December 1838.

Sir,

th March 1838,
No. 383.
7th Nov. 1838,
No 1496.

I HAVE the Honour to submit, in reply to the Requisitions conveyed in your Letters noted in the Margin, the annexed Notes on the proposed Penal Code, which I beg may be laid before the Court of Nizamut Adawlut.

I have, &c.

(Signed) R. N. C. HAMILTON,
Officiating Commissioner.

NOTES on the proposed PENAL CODE.

Chapter II. Clauses 41 to 46 inclusive. "The Government of the Presidency" is the Term used. This excludes "the Governor General of India in Council." Would it not be more consonant with established Custom to vest the Powers conferred in these Clauses in the Hands of the Supreme Government? The Attribute of Mercy belongs to the chief ruling Power, and there seems no Reason for excluding the Governor General of India in Council on this Occasion. After the Word "passed," in the First Line of Clause 41, the Sentence might run, "The Governor General of India in Council, on a Recommendation from the Government of the Presidency;" and a similar Alteration in the subsequent Clauses.

Clause 54.—A is sentenced to pay a Fine of 1,000 Rupees, and does not. Is he, in default of Payment, only to suffer Seven Days Imprisonment? The Case may not be punishable by Imprisonment.

Clause 57.—May a Zemindarrec, the Property of an Offender, or his Share of it, be sold under this Clause? If so, by the Magistrate, on Application to the Collector, or how?

Chapter V. Clause 109.—Ought not Words fixing some definitive Individuality to be used? "Whoever, *being a British Subject* [or *Subject of British India*], wages War, &c., shall be punished by Death." The Rulers of Foreign independent States, any more than those of France or Russia, cannot be declared liable to Death for waging War, yet the Clause as it stands comprehends them.

Clause 115.—The Privileges of Asylum appear to be infringed by this Clause. Subjects of neighbouring States cross into our Territory, driven by Oppression, Misrule, or the gross Exactions of the Native Agents. They may return to their Villages across the Border, to bring off their Property. Would they commit a Depredation within the Meaning of this Clause?

In Furruckabad the Oude Subjects live within our Border. They cross the Frontier, and bring over their Cattle. Are they liable to Punishment?

Chapter VIII. Clause 150.—The wearing a Badge or carrying a Token resembling a Badge or Token used by a Police or Revenue Officer is under certain Circumstances punishable. It behoves the Government more than ever to establish a uniform Badge

or

or Garb, for that which may be unlike in one District may be exactly like in another, so long as the Form is left to the Taste or Caprice of public Servants.

Chapter X. Clause 193.—Might not the Introduction of the Word “destroys” after “conceals” in this Clause be advantageous? Jewels and Plate are constantly broken and melted, and this Act, though culpable, is not within the Meaning conveyed in the Terms “removes, conceals, delivers to,” &c.

Clause 201 and sundry Clauses.—The Escape of a Civil or Revenue Prisoner, that is, a Person not detained in pursuance of a Sentence of a Court of Justice, is not made punishable by these Clauses, or by those in Chapter XI.

Chapter XII. Clauses 230 to 234 inclusive.—Are Copper Pice, which are the Currency of the Country and issued from the Government Mint and Treasuries, *Coin* within the Meaning of the Clauses in Chapter XII.?

Chapter XIV. Clause 260 makes the offering for Sale as wholesome any Food knowing the same to be noxious a punishable Offence. A Clause empowering a Magistrate, on receiving Information that a certain Person is selling noxious Food (damaged Grain and the like), to assemble a Jury, and in the event of their finding the Food to be noxious, to destroy in public all such noxious Food, seems required.

Clause 264.—Under this Clause must the Conservancy Department in Towns and Cities be protected? It makes, however, only the Proprietors of Property in possession punishable. Why not include the actual Perpetrators of the Nuisance? The former may be beyond the Reach of the Magistrate, the latter not so.

Chapter XIX. Clause 376.—I beg to transcribe an Extract, Paragraphs 30 and 31, from my Police Report for the first Six Months of 1838, bearing on the Subject of this Clause.

“There is a great Difference in the Opinion of the Magistrates as to what Degree of Violence or Assembly constitutes the Crime of Dacoity. It is asserted by some that any Number of Persons attacking a House with a View to plunder is Dacoity; others consider that to constitute the Crime requires a large Assemblage or Gang of Persons, armed, acting in concert, and directing an Attack which has been planned and matured; whilst others consider an Attack on a House, Dwelling, or Store requisite to constitute the Crime, and that an Attack on the Person on the Road is a Highway Robbery. Clause 376 of the proposed Code defines Dacoity thus:—‘Where Six or more Persons conjointly commit or attempt to commit a Robbery, or where the whole Number of Persons conjointly committing or attempting to commit a Robbery, and Persons present and aiding such Commission or Attempt, amounts to Six or more, every Person so committing, attempting, or aiding is said to commit Dacoity.’ In this Definition it is not required that the Parties be armed, or that any Violence be committed. Supposing that Six or Seven Persons are arrested in an Enclosure at Night, who can give no Account of themselves, may they be put on their Trial for an Attempt at Dacoity, and be liable to rigorous Imprisonment for a Term not less than a Year, which may extend to Seven, and also to a Fine, provided an Individual will only prefer the Charge? The Definition of the Crime as given by this Clause will change the whole Feature of our Police Returns. The Statements will show a vast Increase in a Crime which has lately been viewed as requiring special Means to put down, and which indeed will seem to appear, under the proposed Definition, increasing, instead of yielding to the special Measures which may be enacted.”

Paragraph 30.

“There can be no Reason why the Union of Six Persons for illegal Acts, when proved, should not be as severely punished as requisite; but that that Number assembled, unattended with any aggravating Circumstance, should constitute the Crime of ‘Dacoity,’ does seem unnecessary. Penal Enactments always are, and must very properly be, strictly interpreted. Either the Offence charged is a Crime, or it is not. It will hardly do to leave to the Magistrate a Discretion to alter or interpret a Law; yet such will be the Case if the Clause goes forth as now drafted.”

Paragraph 31

Chapter XXIII., Clauses 463 to 465 inclusive.—There is no Law of Apprenticeship amongst the Contracts. Such a Law is much required. The following Extract is transcribed from my Police Report:—

“The Guardianship of Infants is a most important Part of judicial and magisterial Duty, and all Engagements connected with it should be conducted under the immediate Eye of the Executive, and liable to the Surveillance of the Magistrate. Who are more helpless than this Class of the Community? and those who undertake their Care may, through Neglect, cause infinite Misery and Distress, and ought to be so placed with reference to the Magistrate as to be obliged to discharge their Duty.”

Paragraph 22

Dawk Contracts, or Contracts for the Conveyance of Mails, seem to me to require to be noticed in the Penal Code.

“I take this Opportunity to suggest, that the Contracts for carrying the Mails made by Government and the Government Contractors be made specially cognizable under Clause 463, Chapter XXIII., of the Penal Code. There is now a Case of vast Importance under Discussion at Agra. The Contractor on the Bombay Route, under the Postmaster, has subjected himself to such a large Amount of Fine during Two Months, on account of not keeping his Time, that the Deputy Postmaster is desirous of making him either perform his Contract according to its Terms, or relinquish the Contract, and enable him to make other Arrangements. The Magistrate considered the Matter as

Paragraph 49 of Police Report.

" One only cognizable by the Civil Law, and that the Provisions of Regulation 7, 1819, did not apply to Contracts of this Description. I am not informed of the Course the Deputy Postmaster proposes to adopt ; but it is evident that unless such Contracts are cognizable by the Magistrates the Delays of the Civil Court will defeat all the Objects of Post Office Contracts."

(Signed) R. N. C. HAMILTON,
Officiating Commissioner.

C. FRASER Esq. to H. B. HARRINGTON, Esq.

(Judicial Criminal, No. 59.)

Office of Commissioner, N. W. Territories,
Camp Jaurghat, 7th March 1839.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letters, No. 383, dated the 24th March, and No. 1,498, dated the 27th November 1838.

2. As far as a cursory Perusal of the Penal Code compiled by the Indian Law Commissioners would admit of my judging of it, I should consider it to have been framed in a humane Spirit, and to embrace all Crimes and Offences likely to form the Subject of a judicial Investigation in a Criminal Court.

3. Its Length has appeared to me to afford some Grounds for Dissatisfaction with the Code, and it might, I should hope, be abridged very considerably, for in its present voluminous Enactments I see no Chance of an ill-educated Native becoming familiar with the Law ; and any Revision that would dispense with the Necessity of so many illustrative Examples of Crimes would be attended with obvious Advantage.

4 The cumulative Penalties for several Crimes has struck me as tending to Perplexity and Indistinctness. The 4th Chapter, on Abetment, might, I should suppose, be rendered unnecessary by an Incorporation of its Provisions in regard to each Crime with the Chapters relating to the Crime, and its separate Existence seems likely to create Embarrassment.

5. I feel bound to confess that I did not at first distinctly discover the Intent of some of the Clauses, and that they were scarcely intelligible to me, until I had read the Examples brought forward in Illustration of them ; and it would doubtless be preferable, by the Adoption of other Terms for the Definitions of Crimes, to obviate the Necessity for such Illustration.

6. I must, however, acknowledge that I do not feel myself prepared to enlarge on the Merits of the Code, and my Time is so fully taken up with the Duties of my Office as not to admit of a more careful and attentive Examination of it.

I have, &c.
(Signed) C. FRASER, Commissioner.

G. W. BACON Esq. to H. B. HARRINGTON Esq.

Seharanpoor, Judge's Office,
1st November 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letter under Date 21th March last, with its Enclosures, and beg to submit the following Remarks on the Penal Code, premising that should any of my Observations be deemed somewhat too free, I hope to be allowed to plead Exemption from Censure under Clause 174 of the Code itself.

CHAPTER I.

General Observations.

2. This Chapter contains Definitions of the commonest Words, most of which appear to me altogether needless, such as " Death," " illegal," &c., while one of real Importance is erroneous. I allude to Clause 32, defining a Person of " Asiatic Blood," under which a Child of an Englishman born in Wedlock is deprived of his Father's Rights, and vested with those of his maternal Grandmother, if she be a Native of any Part of Asia. This is obviously either an Absurdity or an Oversight. Another Definition of much Importance has been omitted, that of the Word " whoever," which cannot be used in its ordinary Sense in Chap. V. Clause 109, and other Parts of the Code, but should be explained to mean a Subject of the East India Company:

CHAPTER II.

3. Clauses 43, 44.—Here we see the Consequence of the erroneous Definition in Clause 32. " A Person of Asiatic Blood," that is, one whose Grandmother was a Native of Asia, is presumed to be so physically different from a pure European as to feel little Annoyance from Confinement for Seven Years and upwards in the Gaols and under the Climate of this Country, while the Government is authorized, not only to substitute Transportation in the Case of the pure European, but, to use the Words of the Commission, " would doubtless make Arrangements for transporting such Offenders to some
" British

" British Colony situated in a temperate Climate." Banishment, not in Confinement, would frequently turn out no Punishment at all to a Native. He is to quit the Company's Territories. The Inhabitant of Cawnpore passes the Jumnah into Scindiah's Country, and, if he don't take some of his Family with him, has it in his Power to see them, and visit his Home whenever he thinks fit.

Banishment in Confinement with Labour to another Zillah has been found to be a very effective Punishment, and I recommend its Continuance.

4. Clauses 52, 54.—Under Sentence of Fine and Imprisonment, Punishment in default of Payment is Imprisonment for a greater Period, in addition ; but if the Sentence be Fine alone, the Imprisonment in default of Payment shall be simple, and not exceed Seven Days. Let a European be convicted of the Offence described in Clause 307 ; the Court, in consideration of the " physical Difference," sentences him to simple Imprisonment for Two Years, and a Fine of 1,000 Rupees, which is not paid, and the Government commutes the Imprisonment for Banishment, under Clause 44. It is evident that the Sentence of Fine might just as well not have been passed.

5. I object to Clause 50, because it leaves too much to the Discretion of the Judge, like the English Law regarding the Punishment of Manslaughter, and also because under the Code Fines are limited and unlimited in Amount, without any Reason whatever, and without any Reference to the Nature of the Offence. Examples of the Kind are innumerable. Vide Clauses 278, 280, 282, 284, &c.

6. Clause 61.—The Difficulty here is how the Prisoner is to defend himself, and how in some Cases he is to be punished on Conviction. Vide Illustration (a), Clause 98. A was tried for abetting B in the Robbery and Murder of Z, but as it appeared on the Trial extremely doubtful what " A considered likely " to be done by B, the Court were at a loss whether to convict A of abetting Murder or only abetting Robbery ; but as there is no Punishment common to both Crimes, what Sentence is to be passed on A, B being convicted of Robbery and Murder ?

CHAPTER III.

7. I think the Chapter of Exceptions quite needless, and that the Portion on the Subject of private Defence is more likely to bewilder the Courts and the People than to guide them. Whether the Right of private Defence has been properly exercised or not depends on so many and such various Circumstances that I think it would be far better to leave the Question entirely open to the Judgment of the Court than to attempt to impose Rules which, after all, may be obeyed or not, as Opinions vary. Thus nothing can be more vague than the following :—Clause 75, " more Harm than is necessary ; " Clause 76, " first and secondly," as may reasonably cause " the Apprehension "—sixthly, " which may reasonably cause it to be apprehended that the wrongful Confinement will be such as is punishable by this Code with Imprisonment for a Term exceeding One Year." Under this the Person assaulted must have the Code at his Finger's Ends, or search out Clauses 334, 335 before he can know whether or not he has a Right to exercise private Defence to the Extent allowed by Clause 76, and kill the Assailant, or whether he must keep within Clause 77 ; and how the Judge is to discover for what Period the Assailant intended to confine the Defender, I confess I know not. Nothing is more common than the Defence that the Deceased was supposed to be a Thief when murdered in cold Blood ; and when really suspected, the first Thing done towards his Apprehension is usually the Infliction of a Sword Cut. Whatever may the Case in Bengal, the Natives of these Provinces are ready enough to slay, right or wrong, and require no further Encouragement.

CHAPTER IV.

Abetment.

8. I think it would be far more convenient were the Punishments for Abetment of different Offences given under the Chapters which treat of those Offences. At the same Time the Chapter requires some Remarks. Clause 86, Fourthly. The Proof of a Man's knowing what was likely to occur will be difficult to get at. Clause 87, Illustration. A must prove that he believed B had a Right to take the Horse. It will not be sufficient that there is Reason to believe he did believe.

9. The Punishments awarded in Clauses 90, 91, 93 will most frequently be inadequate. Suppose the abetted Offence punishable by Imprisonment for Life ; then, under Clause 48, the Abettor is liable to Six Years Imprisonment. Clause 94. Suppose the Offence abetted to be that described in Clause 132 ; here the Abettor is liable to a severer Punishment than the actual Offender. Clause 96, Illustration. Here it will be extremely difficult to prove A's Intention in buying Poison without some Act, and if his Intention be proved by any subsequent Act he will come under Clause 308. Clause 98, Illustration (a). We cannot prove what A really considered likely to happen ; but, from the Circumstances, A ought to have considered it extremely likely, indeed most probable, that Violence would ensue. He must therefore take the Consequence of accompanying and abetting B. Illustration (b). Here, again, we have to prove what A knew was likely. The Rules of Clauses 105, 106, 107, and 108 are of too comprehensive a Description as to the Offences, and the Punishment must be frequently altogether inadequate. The Illus-

tration is a sufficient Proof of this. A very particular Knowledge of the Law is also required to make Infringement culpable ; whereas I always thought that Ignorance was not received as a Plea in defence.

10. The Fifth Chapter requires no Remark. It would be well if, under present Circumstances, the American Government would adopt Clauses 114 and 115.

CHAPTER VI.

Offences relating to Army and Navy.

11. The Note on this Chapter gives good Reasons for not following the Military Law ; nevertheless the Punishments awarded in Clauses 118, 119 seem scarcely adequate, when it is considered that Death is the Punishment awarded to a Soldier or Sailor guilty of the Offence described in the latter, and that Clause 123 provides Imprisonment for Life for instigating Desertion,—no greater Offence than instigating Mutiny. The Exception to Clause 124 may be noticed as a Proof of the extreme Negligence with which the Code has been prepared,—a Husband is allowed to harbour his Wife, who has deserted, as a Soldier or Sailor.

CHAPTER VII.

Offences against Public Tranquillity.

12. This includes Affrays of all Descriptions ; an Offence of very frequent Occurrence throughout India, and which one would think might have attracted the particular Notice of the Commission, instead of being slightly alluded to, ill defined, and Punishments altogether inadequate provided. Clause 127 defines a riotous Assembly : the Object of the Assembly, not its Acts, constituting Riot. Joining such an Assembly is rioting. The Punishment is cumulative when any other Offence is committed in the course of rioting. Clause 133 provides Five Years and Fine as the Punishment of Rioters present at the Commission of Murder during Riot, not being the actual Murderers. Now all this is quite insufficient to allow a Hope that it will check this most serious Offence. Affrays are attended with beating, wounding, and Homicide. Without Violence of some Kind being committed, or without Disobedience of Command to disperse, I do not see why the Assembly should be called riotous, and the Members of it be liable to Punishment. Such an Assembly is not an Affray. Making the Punishment cumulative is useless, because in an Affray one can seldom procure Evidence to show the Individuals who inflicted the Blows or Wounds, or committed Murder ; and the Punishment therefore should attach to all concerned, and be regulated by Circumstances, such as the Origin of the Dispute, Description of Arms used, whether sudden or premeditated, and the Rights of the Parties concerned. This Punishment should extend even to Death when Homicide has been committed, and to Imprisonment for Life in atrocious Cases attended with wounding.

CHAPTER VIII.

On the Abuse of the Powers of Public Servants.

13. The Clauses of this Chapter require little Notice. I do not exactly see why the Punishment in Clauses 144, 145, and 146 should vary ; and it seems to me that the Offence described in Clause 150 should rather be laid to the Masters who order than to the Servants who obey. With reference to the Note on the Impunity of Bribers (Pages 36 and 37), I must submit my Opinion that the Commissioners altogether mistake the State of the Case. There is very rarely, if ever, Occasion for Extortion on the Part of the Receiver, or for Self-defence on the Part of the Giver. All act in strict Conformity with the immemorial Custom of the Country, that no Inferior shall approach a Superior, more particularly a public Functionary, without a Present in his Hand to obtain Favour generally, without any particular Object. No Police Darogah or Moonsiff, and very few of the higher Natives possessing Power, ever pay for anything, and are fed and clothed by the People. If an Individual requires a particular Boon, such as a Decree in his Favour, he has only to outbid his Antagonist, and this, not at the Request of the Officer, but as a Matter of Course. How could he expect Favour when the other Party paid higher ? Nothing is more common than for an Appellant to state in his Petition that the Sudder Ameen or Moonsiff decided against him, notwithstanding the Payment of such a Sum, or that the Decree against him was given in consequence of a higher Bribe administered by the opposite Party. Now the Appellant does not mean to state that there is anything extraordinary in this, or that the Native Judge has acted wrong or irregularly in taking his Money, or that of the other Party, but merely that it is hard he should have got nothing for his Present, and the giving which was a Matter of Custom, and an unquestionable and well-known Fact. It is to be remarked, that this is never given as a Cause of Dissatisfaction in appealing from the Decree of an English Judge, because it is neither the Native Custom to bribe those Officers, nor theirs to receive. In the Eyes of the Natives there is no Crime either in giving or receiving Bribes ; and if we are desirous of impressing them with a different Notion, we must punish both Giver and Receiver, for both are only acting in compliance with the Customs of their Ancestors, and one is not more guilty than the other.

CHAPTER IX.

Contempts.

14. Clause 156.—I have often heard it disputed whether a Court has Power to call for Merchants Accounts, when necessary to the Evidence in a Case. I have never hesitated to do so; but it might be well to mention them in this Clause. The Fines should be limited, in Clauses 159, 160, 162, 166, 170, 171, 173, 175, 184, and 186, in proportion to the Terms of Imprisonment, because the Offences are for the most part Contempts which ought to be punishable without Appeal by the offended Authority. Now the Feelings of public Officers differ on such Occasions, and we shall have Fines of all Amounts levied for the same Offence.

CHAPTER X.

Offences against Public Justice.

15. The Provisions for the Punishment of Perjury and similar Offences require no Remark, except that One of the Illustrations (a), Clause 190, is not the happiest that might have been given. The Offence is fabricating false Evidence to save himself without injuring others; but, in the Illustration, A does not fabricate false, but true Evidence. In this Chapter we have again too much depending on what the Accused intended or knew to be likely. Vide Clauses 193, 194. Here the Offence is removing, &c., or claiming any Property *likely* to be taken as a Forfeiture or Fine, or in Execution of Decree in a Civil Court. Now it is impossible for any One to know what Decree is *likely* to be passed by the Civil Courts in this Country (indeed it would be a great Piece of Presumption anywhere), more particularly since they have been made over to the Natives. The Parties themselves cannot form a Guess on the Subject; much less can a Third Person be presumed to know what is likely to be done by a Judge, of whose Honesty, he, with very good Reason, entertains but an indifferent Opinion. Clause 196 is much to be admired, and I would give the Power of punishing to the Civil Judge, but limit the Fine, because it is a Species of Contempt. I also entirely concur in the Remark on the Subject of false Pleading, contained in the Notes, Pages 43, 44. The Punishment of this Offence, for Offence it undoubtedly is, is perhaps more necessary in this Country, where no Encouragement to Falsehood should be held out; there is quite enough without it. Clause 197 is an Extension of 179, with enhanced Punishment. I do not find any Mention of returning from the Transportation for Life. Clauses 203, 204 do not provide for this Offence.

CHAPTER XI.

Offences relating to the Revenue.

16. I would limit the Fines, wherever they have been left to the Judge's Discretion: we shall otherwise be having all Sorts of Amounts for the same Offence.

CHAPTER XII.

Offences relating to Coin.

17. The same Remark applies to this Chapter. Clauses 243, 244 contain the Condition which I must be allowed to consider objectionable, "intending or knowing it to be likely that such counterfeit Coin may pass as genuine." How this is to be proved I cannot conjecture. It is altogether Matter of Opinion what the Possessor intended to do with the counterfeit Coin, or knew to be likely regarding its Disposal. He might think the Counterfeit so good as to intend passing it as genuine, while another might pronounce it to be a most clumsy Performance, that certain Detection must follow the Attempt, and that no Man in his Senses would have had any such Intention. This may be the Opinion of the Judge himself; but still the Offender must be convicted, if his Intention or Notion of what was likely be proved, which is just possible, and no more. I think these Two Clauses might be cut out. 241, 242 provide for knowingly passing or attempting to pass, which is quite sufficient. Illustration (a). A, a Collector of Curiosities, purchases counterfeit Coins, knowing them to be such, and not *intending*, but *knowing it to be likely*, from the Goodness of the Counterfeit, that such Coin may pass as genuine. A is guilty of the Offence defined in Clause 243. The same Condition mentioned in the Commencement of this Paragraph occurs in Clauses 238, 239, but then it does not cause the same Difficulty, because the Fact of "knowingly importing" counterfeit Coin may be taken as tolerably strong Evidence that it was imported for the Purpose of being passed; not so with mere Possession, Clauses 243, 244, which proves nothing at all, and is of itself no Crime whatever.

CHAPTER XIV.

Offences affecting Public Health, &c.

18. I do not think the Code provides sufficient Punishment for many of these Offences. Malignantly attempting to spread Disease dangerous to Life (Clause 257) ought to be
(263.)

visited with more than Six Months Imprisonment, even though the Fine be unlimited, which is wrong. The same, except that the Fines are limited, may be said of Clauses 258, 259, 260, 261, 262, 263. Clause 264 confounds in One Punishment "infecting the Atmosphere so as to render it noxious," and causing a disagreeable Smell. Clause 265 leaves too much to Opinion. One Man may consider the Pace of the Rider indicated a Want of due Regard for Human Life, and another may think it nothing remarkable. From Clause 268 to 273 inclusive a Portion of the Guilt is made to depend on what the Prisoner believed; but it appears to me that if the Prisoner omitted to take all Order *in his Power* to guard against any probable Danger to Human Life he is punishable, without Inquiry into his Belief on the Subject.

CHAPTER XV.

Offences relating to Religion and Caste.

19. I think the Provisions of this Chapter quite proper, with the Exception of the unlimited Fines for Offences of small Importance. In Page 6 of the Notes I find it was intended that serious Cases alone called for unlimited Fine; but I have found many Instances of its being made the Punishment of very trifling Offences, and think, if allowed at all, it ought strictly to be confined to those of a more serious Class. Clause 286 of this and 290 of the next Chapter are the only Instances of enhanced Punishment on Second Conviction I have yet met with.

CHAPTER XVIII.

Offences affecting the Human Body.

20. The Illustrations of Clause 294 are fully re-illustrated in the Note on this Chapter, Page 53, and others are added. Illustration (g) supposes a Case of Death by Neglect in wrongful Confinement. The Guilt is the same though the Confinement be legal (d), is noticed in Page 42 of the Notes, and is I think quite just and proper. I cannot find it any where very clearly laid down under what Circumstances Homicide, committed in the Perpetration of another Offence, shall be considered Murder. Clause 380 provides only for the Punishment of Dacoity with Murder; but though I cannot discover anything definite in the Body of the Code, the Subject is treated at considerable Length in Pages 64, 65 of the Notes, but always under the Supposition that such Homicide in Perpetration of another Offence is the Result either of pure Accident "or Rashness or Negligence," and I conclude that Clauses 304, 305 are those referred to in Page 65 of the Notes. Now the former Clause awards Punishment of Two Years and Fine to "whosoever causes the Death of any Person by any Act or any illegal Omission, which Act or Omission was so rash or negligent as to indicate a Want of due Regard for Human Life." But what sort of Homicide is this? The Punishment shows that it is not Murder, and it is certainly neither Manslaughter, Homicide by Consent, nor in Defence. It is, however, something illegal, or it would not be punished. Clause 305 goes on to provide that whoever attempts an Offence subject to a Reference to Clause 327 (the Meaning of which Reference is not very clear), and also commits the Homicide described in the preceding Clause, shall be punished under the said Clause, and shall also be punished as if he had completed, instead of only attempted, the Offence. Of this an Illustration is given, which renders the Law anything but clear. "A uses Force to Z, a Woman, intending to ravish her." I am at a loss whether to put this under Rashness or Negligence. Anyhow A is acting illegally. "He does not ravish her, but commits the Offence defined in Clause 304;" that is, kills her. He is to be punished, both under Clause 304, for rash and negligent Homicide, and under 360, for Rape; thus punishing for an Offence not committed, because joined to another. Now let us turn to the Illustration of "A's savage Dog" in Page 55 of the Notes. Not calling off the Dog, who kills Z, is Murder in A, his Owner. Why? Because his "Omission to take proper Order with the Dog is illegal," by Clause 273, which punishes the not-taking such Order with Six Months Imprisonment and Fine of 2,000 Rupees. When we compare the Two Cases, we find that there is no Intention to kill in either, but in the First there is Violence in the Attempt to ravish; in the Second there is no Violence, but there is Negligence, and one could therefore think it might come under Clause 304, and so probably it would but for A's "illegal Position," which makes his Offence Murder. But is not the other A in an equally illegal Position; and is not his Offence Murder, if the First is? If Z, in the Illustration to Clause 305, killed A, the Homicide in Defence would come under Clause 76, and be justifiable. I should doubt much whether the other Z would be equally justified in killing A because he did not call off his Dog. The Punishment of "Homicide by Rashness or Neglect" depends so much on Circumstances that I would not restrict it to the Amount awarded in Clause 304. But there are many Cases of Homicide in Perpetration of another Offence that have no Connexion with "pure Accident, Rashness, or Negligence," being, like the Illustration to Clause 305, attended with Violence, and such I take to be Murder, and would punish accordingly. I have already referred to Clause 380, punishing with Death all concerned in Dacoity with Murder, and Clause 382 provides for the cumulative Punishment of Hurt in committing any Robbery. The Illustration

Illustration shows that "Hurt" does not mean Killing, and I cannot find any clear Provision for the Punishment, if the Crime refer to the Illustration (a). Clause 98.—Here a Midnight Housebreaker, B, kills Z, an Inmate of the House, who resisted him, and is very justly considered guilty of Murder; and I should have said the same had B, hearing a Noise, and therefore fearing Interruption, fired in the Direction of it, and killed his Accomplice, A. He is protecting his illegal Act by Violence, and Death ensues. It is Murder. A stops B on the Road, and robs him of his Bundle. While examining its Contents, he threatens B with instant Death if he moves until he has also searched his Pockets. B runs, and A fires at him with no Intention of killing, but merely to stop him. B, in a Fright, slips, pitches on his Head, and breaks his Neck. A is guilty of Murder. Where Homicide accompanies illegal Violence, I would call it Murder.

21. I will leave culpable Homicide by Consent to be punished according to the Circumstances of the Offence, and not limit the Sentence to the Term in Clause 302, because Homicides by Consent, which undoubtedly amount to Murder, are not uncommon in this Country, though they cannot be brought under any of the Provisions of Clause 298. I recollect a Case of an offended Brahmin, who determined on putting himself to Death, and thus secure the eternal Punishment of his Adversary. On telling his Intention to his Mother, she represented that he was young, and his Life of use; that she, on the contrary, was old, and of no Importance, and that as her Death would answer the Purpose as well as his, it was clearly advisable that she should be sacrificed instead; which, the Son approving, he killed her, and was very justly hung for the Murder. In Note Page 69 it is stated that the Punishment of Torture is made very severe on account of the Cruelties practised by Robbers in this Country. This refers to Clauses 321, 322, the First providing for Torture not grievous, the Second for grievous; the Definitions of this Term being given in Clause 315. Now Torture is Torture, whether grievous according to the Code or not, and we should legislate against the Practice of such Barbarity, and should inflict the same Punishment, whether the Agony cease with the Application, or whether it continue for Twenty Minutes after, or as many Months, or cause, or not, any of the Privations and Disfigurations described in Clause 315. Deliberate Torture should be punished with Transportation or Imprisonment for Life; but we are now legislating against the Cruelties of Dacoits. Dacoity is punishable as above, under Clause 379, and to this Clause 382 adds cumulative Punishment; that is, in the Case of grievous Torture, an Addition of the same Sentence, which is an Absurdity. I would therefore punish with Death the Director and Inflictor of Torture in the Commission of Dacoity, and invariably transport for Life all those concerned in a Dacoity with Torture.

22. Clauses 316, 317, which define causing Hurt and grievous Hurt, make the Crime depend on the Offender's intending or knowing himself likely to cause Hurt or grievous Hurt, the latter being defined in Clause 315. Now the Intention may be easily proved from the previous Conduct of the Offenders; but how we are to get at what Degree of Hurt he knew himself likely to inflict I know not. We will take the Illustration (a) to Clause 329. A intends Hurt to Z, but it is impossible that he should know it to be likely that the Hurt would be grievous under any of the First Seven Definitions, Clause 315, or that Z would in consequence of it be confined to his Room for Twenty Days, under the Eighth. Hurt not at all grievous is received by Z. Is A to be punished under Clause 318 or 329, or both? It is clear that Hurt, of both Degrees, may be the Consequence of his Conduct; but that is no Reason for our inferring that it was his Intention to cause grievous Hurt, or that he knew it to be likely that the Hurt would be of a grievous Kind. Instead of troubling ourselves with what the Offender thought was likely to happen, we ought to inquire and decide whether his Act was such as would by its Nature more probably cause grievous than simple Hurt, and whether, from previous Enmity, there was Reason to conclude that the Offender intended the former rather than the latter; and there is scarcely any trifling Act of Assault or Mischief, or every School Boy's Trick, which is not of this Nature. How many Trials for Murder have we had in the Supreme Court in which Death was caused by a slight Kick or Blow, never meant or thought likely to inflict grievous Hurt? The Illustrations (b) and (c) of Clause 329 are very different from (a), which is a favourite Lord Waterford Prank, and has not yet caused grievous Hurt to anybody; and the Court (it does not matter what A thought) will decide that Steel Traps and explosive Substances are not to be used in Joke, and that A, supposed to be in his right Senses, must have known that there was the greatest Probability of their causing grievous Hurt rather than simple. The explosive Substance in a Letter, indeed, has been tried Two or Three Times in England, and never known to fail. The last Experiment was made in 1836, at the Liverpool Post Office, when One of the Clerks lost an Eye, and was much burnt. Turn to Clause 338 and its Illustration. Here A is first guilty of wrongfully confining Z, and next of omitting to do what he knew was necessary to save his Eyesight. For this Offence he is liable to Imprisonment for One Year, with Fine, or both; but this Offender A, has done much more towards inflicting grievous Hurt (Loss of Eyes, Definition No. 2.) than A in Illustration (a), who put a Rope across the Road with little Chance of grievous Hurt, and yet the latter is liable to Imprisonment for Five Years.

23. I think many of the Illustrations of Assault might be omitted, as more likely to mislead than to guide the Court or the Public. Wrongful Restraint and Confinement are in almost every Case Assaults, and there is no Punishment provided for Assault in attempting

attempting wrongfully to restrain, because it was clear that the wrongful Restraint was itself an Assault. (Vide Illustration (a) Clause 375.) Clause 350.—Assault with Intent to confine wrongfully. Here the Degree of Punishment depends on the Length of Time the Confinement was intended to last, and other Circumstances given in Clauses 333, 334, 335, 336, and 337. Confinement and Assault to confine under false Pretence of Janacy should be particularly noticed, and severely punished. Under the Head of Kidnapping I cannot find Sale and Purchase of Children, which is common in this Country, and should be provided for.

CHAPTER XIX.

Offences against Property.

24. Clauses 366 and 388.—Any Person stealing a Letter from the Post Office, and the Clerk in charge of the Letter misappropriating the Contents, are made liable to the same Punishment, which appears to me unreasonable. In the last Clause, the Post Office Servant's Offence is called Criminal Breach of Trust, but by English Law it is Theft, and under a particular Statute punished by Death; but it is of no Consequence what it is called, there is no Comparison between the Degrees of Criminality, and the Punishment awarded in Clause 388 must be allowed to be quite inadequate. The Punishment of cheating by Personation being double that of simple cheating, I must conclude that Personation alone is an Offence, whatever may be the Intention. I well remember an old Lady, Widow of a Baronet, who, being in reduced Circumstances, never assumed the Title. She would have been punishable under Clause 393, Illustration (f); and the present Earl Berkeley is in a like Predicament. I would omit all the Illustrations of Mischief. Were they thrice as numerous they would not include every Description of that Offence.

25. Clauses 413, 414.—In the close built and combustible Villages of this Country, Fire rarely contents itself with the Destruction of One House; and whatever may be the Intention of an Incendiary, and whatever he may know to be likely, the Man who puts fire to One House will in all probability burn Half the Village, and his Crime is the same, whether he meant to stop at One House or go on to not less than Five. I would extend the Punishment in Clause 414 to all malicious burning of Dwelling or Out-houses or Vessels, and proportion the Punishment to the Probability of extensive Mischief. Clause 415.—A great Proportion of Vessels in this Country are not decked, and Mischief may be as easily committed on these as on the others. I would cut out "decked" from this Clause. Clause 430.—I do not think the Punishment of this Clause is sufficient, particularly in the Western Provinces, where Housebreakers almost invariably go armed and ready for Murder.

CHAPTER XX.

Offences relating to Documents.

26. I do not understand why the Offence defined in Clause 453 comes under this Chapter. Vide Clause 388, and my Remark thereon.

27. I have now, I think, pointed out what appear to me some of the greatest Faults in the Code, though doubtless many have been left unnoticed, and many more Errors might be discovered on a more careful Examination. I am unwilling, however, to trouble the Court with any further Analysis of the Chapters individually, the Report having already extended to a most unreasonable Length. In conclusion, I will beg to add a few general Remarks on the Merits of the Code itself.

28. In Page 60 of the Notes, I find these Words: "That on these Subjects our Notions and Usages differ from theirs" (the Natives) "is nothing to the Purpose. We are legislating for them." And but for these Words, and Mention of the Crimes of Dacoity and Thuggee, it would be extremely difficult to discover for what Country the Code was intended; but as we are thereby assured that it was meant for the Natives of India, I trust I shall be excused for offering a few Remarks on its general Applicability.

29. The Code, Illustrations and all, must of course be translated into the Native Languages, for it will be very long before the very best educated Natives acquire sufficient English to understand it in the Original. The Translation will be a Work of extreme Difficulty, and in many Places we shall be obliged after all to use the English Word. In Example, Clause 418, in which is the Definition of "Trespass;" but the Definition must be translated; it amounts to Trespass, for which I doubt our being able to find a single Word or indeed any Translation less paraphractical than the Definition. Again, 421, "Lurking House Trespass" requires a Translation into plain English in the first instance, this is to be turned into Hindostanee, and then the Name of the Offence is to follow in the same Language. I doubt whether a Jargon, retaining the English Titles of the Offences, will not be preferable to any Attempt at translating the Definitions and Titles also; leaving out of the Question "Explanations and Illustrations," which are Definitions also, and which in most Instances "make that darker which was dark enough without." Thus the Style of Composition of the Code by no means proves to me that it was ever intended to be made known to those for whom it was compiled.

30. Again, the Offences most prevalent in this Country are despatched in a few Words,—as of little Importance,—or not noticed at all; while others, comparatively unknown, are
treated

treated at great Length, and entangled in a Maze of Definitions, Exceptions, Explanations, and Illustrations, from which there is no Escape. See Illustration (e) to Clause 418. In this Country little Boys have not yet learnt to climb up behind our Carriages; at least not out of Calcutta; but when they do, I do not think they will be made to understand that they are by so doing "exercising a Dominion over Property, not having a legal Right independent of the Consent," &c. &c., the complicated Definition of "Trespass," the Offence of the said little Boys.

31. Everybody who suffers by it knows what "Mischief" is, but everybody's Mischief is not always the Code's "Mischief," as is perfectly clear from the Illustrations to Clause 399. Illustration (c) is a very notable Mischief, being until lately a Capital Offence in England. Vide the Case of Captain Codlin, Easterly and Macfarlan, in 1802, I think. And so of the other Illustrations, which are very serious "Mischiefs," or rather something more. But trampling down Fields of Corn by Elephants in pursuit of Game is not Mischief, according to the Code's Meaning of the Word. If we do not use Words in their common Acceptation, we shall be continually misleading those we ought to guide; and as to Translation, it is quite out of the Question.

32. As it appears to me that the Code in its present Shape can never be understood by those for whom it was drawn up, I would beg to recommend that it be reconsidered,—the Illustrations altogether omitted,—cumulative Punishments not to be inflicted,—the Crimes most frequent in this Country to be more noticed,—more Attention paid to the Customs of the Natives,—and Offences to be defined in a clear and intelligible Manner, so as to be easily translated. If it be made Law in its present Form, I will venture to say it will be disregarded in Six Months; thus sharing the Fate of the Louisiana Code, which has long ago been superseded by Lynch Law.

I have, &c.
(Signed) G. W. BACON,
Civil and Sessions Judge

(No. 4.)

A. W. BEGGIE Esq. to H. B. HARRINGTON Esq.

SIR,

Zillah Mynpooree, 14th January 1839.

IN obedience to the Orders conveyed in your Circular Letter, No. 383 of 24th March last, I have the Honour to submit the following Observations on the proposed Penal Code prepared by the Indian Law Commissioners:—

2. The Court are well aware that the past Year has been One of great Labour to me, in consequence of the unprecedented Number of Criminal Trials which I have had to dispose of, and which has left me little Leisure for the Discharge of the other Duties appertaining to my Office, consequently I have not been able to peruse and consider the proposed Code with the uninterrupted Attention which the Importance of the Work requires, and which I could have wished it had been in my Power to bestow.

3. On receiving the Code, I was surprised to find that the Law Commissioners, instead of merely inquiring into the State of the existing Laws, and suggesting such Alterations as might in their Opinion be beneficially made (which was the Object contemplated by Section 53 of the Act of Parliament from which they derive their Authority), proposed to abrogate in toto all the existing Laws, and to substitute in lieu of them an entirely new Code; and this Measure is defended on the Ground that none of the existing Codes would serve as the Groundwork for a new and general Code. Long Experience and Habit may, perhaps, have rendered me partial to the Body of Laws which it has been my Duty to administer; but I confess that I shall regret much to see the long-established and daily improving Bengal Code of Criminal Law at once annihilated. The Administrators of those Laws, and the People for whom they were made, are become well acquainted with them; and I am of opinion that, with a few Additions and Alterations, the existing Bengal Code might be adapted to the whole of British India. In it Crimes and Punishments are clearly defined in Language easily intelligible to the Mass of the People. In the new Code, the Definitions of Crimes are by their very Elaborateness rendered more difficult of Comprehension; and, should it be made Law, I fear that there will be as many Offences committed through Ignorance as Wilfulness.

4. I think that I am borne out in this Opinion by the Circumstance of the Legislators having found it necessary to the right understanding of their Laws to add such numerous Illustrations, in anticipation of Difficulties. I should imagine that it would be impossible for any Man, or Body of Men, to prepare a Code of Laws, however fully illustrated by hypothetical Cases, in the Operation of which Doubts and Difficulties may not arise. Such Questions do occasionally present themselves in the Administration of the existing Laws, and in such Cases the doubtful Points are submitted for the Consideration of the Sudder Nizamut Adawlut, whose Opinion once communicated is binding on the Judicial Officers under their Control. These Opinions (which are more deserving of Attention than the Imperial Rescripts, as emanating from a Body of Men well acquainted with the Law,) are a valuable Commentary on the existing Code; and if from Time to Time that Code were digested and arranged, and Alterations or Additions made so as to meet the Cases which formed the Subjects of Reference, I conceive that in course of Time the Body of Law would become as comprehensive and explicit as it is possible for Legislators to

make it. At present, the greatest Objection of the Bengal Code is its piecemeal Diffusion through a long Series of Years and Volumes ; but it would be a Work of no great Difficulty to extract all that was worth retaining and relating to the same Subject, and arrange the Matter thus collected under distinct Heads.

5. A large Majority of the hypothetical Cases which form the Subject of the Illustrations are such as the Common Sense of Mankind would not adjudge to be Offences under the existing Laws or any Laws whatever. In the course of my judicial Experience, I have never met with such extreme Cases as those supposed by the Illustrations. The Necessity of the Illustrations, therefore, is not apparent, under the Operation of our present Code. Out of what does this Necessity arise ? I should say from the peculiar Phraseology of the proposed Code, which attempts to define Crime with the same Precision as is attainable in a mathematical Proposition. To undertake the Resolution of Doubts not likely to occur appears to me a Work of Supererogation.

6. I now proceed to the Consideration of the Matter contained in the Notes to the several Chapters of the proposed Code, instead of addressing myself to the numerous Clauses, a Work to which the Time at my Command would be altogether inadequate.

7. Note A., Clauses 54-57.—The Commissioners Propositions, to limit the Imprisonment in lieu of a simple Fine to Seven Days, with the continued Liability of the Offender's Property for the Realization thereof for a Period of Six Years, would, I fear, not be found to answer in this Country. In most Cases the Offender would submit to the Seven Days Incarceration, and successfully conceal his Property afterwards. The Artifices of the Natives in this Way are endless. The present System of fixing a Period of Imprisonment in default of Payment of a Fine works well, and I should be sorry to see it changed. The Object of imposing a Fine in a Criminal Case is the Punishment of an Offender. This under the existing Law is attained either by the Levy of the Fine, or the Confinement of the Criminal for a reasonable Period in default of Payment ; but it would often not be the Case under the proposed Law. In Civil Cases the Object of Confinement or other Process is to force the Defendant to produce his Money, and satisfy his Creditor's Claim, and in that Case it is just that the latter should have a perpetual Lien on the Debtor's Property, and he will be continually on the Watch to discover it. But to Government, the Possession of a Criminal's Money is not, or ought not to be, an Object. The total Amount of Fines levied throughout the Country would be but a very trifling Addition to its Revenue. Besides, the ministerial Officers of Government would never be so active or successful in the Discovery of the Property of numerous Individuals as each Creditor would be with respect to his One or Two Debtors.

8. The Commissioners propose to empower the Criminal Courts to award the whole or a Portion of a Fine by way of Compensation to the Party injured. In this Country such a Proceeding would have the Effect of inducing many Persons to prosecute who would otherwise abstain from doing so. Should, therefore, such an Alteration be made, we must expect a great Increase in the Criminal Business of our Courts, which are already overloaded ; an Increase to the Judicial Establishment would thus be rendered necessary, while the Means of the Government to meet the increased Outlay would be diminished by the Alienation of the Fines.

9. The Commissioners are opposed to the Infliction of the Punishment of "Tusheer ;" but I cannot divest myself of the Impression, that the Punishment is not without its Use as an Example to others, however inefficacious it may be for the Reformation of the Criminal himself. One of the great Ends of Punishment is thus attained. It is inflicted only in Cases of infamous Character, such as Perjury and Forgery. The Disgrace attaches to the Crime,—not to the Punishment. The Crime and its Consequences are brought more forcibly under the View of the Public by this Ceremony, which is the more desirable as the Courts of Justice in India are generally attended by those only who are concerned in the Cases before the Judge. Nor is this Apathy to Judicial Proceedings compensated by the Publication of Trials in the Newspapers. Perjury and Forgery are Offences of such common Occurrence in this Country that the Penalties annexed thereto should in nowise be mitigated. In the Punishment of "Tusheer" there is nothing repulsive to Humanity, as in the Case of the Pillory, where a brutal Rabble might indulge its Ferocity, and inflict a Punishment far beyond the Law. Under the Orders of the Nizamut Adawlut, "Tusheer," although it may form a Part of the Sentence passed by a Sessions Judge, may not be carried into execution until Three Months from the Date of the Sentence have elapsed, which allows the Criminal to appeal from the Sentence, or the Sudder Court of its own Accord to prohibit the Infliction.

10. Corporal Punishment having been already abolished (with a slight Exception), it is perhaps needless to make any Observations thereon. I may however remark, that had I been called upon to express an Opinion on the Subject I should have objected to the total Abolition of the Punishment, which I consider well adapted to the Punishment of Theft.

CHAPTER XVIII.

Note M.

11. The Commissioners observe, that "no Man can so conduct himself as to make it absolutely certain that he shall not be so unfortunate as to cause the Death of a Fellow Creature. The utmost that he can do is to abstain from every thing which is at all likely
" to

"to cause Death." And this Remark is followed up by the supposed Case of a Pick-pocket accidentally causing Death in the Exercise of his Vocation, and proposing, in such a Case, to visit the Offence with the ordinary Punishment for picking a Pocket. The Argument appears to me fallacious. Surely the Pickpocket might have abstained from *Theft*; and if in pursuing so illegal a Calling he should cause a Death, which otherwise would not have occurred, he ought to be punished more severely than those Offenders the Effects of whose illegal Acts do not exceed their Intentions. Death under such Circumstances, being the involuntary Consequence of an unlawful Act, would, I believe, according to English Law, be at least "Manslaughter."

CHAPTER XIX.

Note N.

12. I do not perceive how "Fraud" can be said to enter into the Definition of Theft, Extortion, and Robbery. "Fraud" is opposed to "Force." By Fraud, the suffering Party is tricked out of his Property; whereas in all Cases of Theft, Extortion, or Robbery, a Degree of Violence is used. Neither do I understand how Extortion can be said to form a Part of the Offence of Robbery. It can make no Difference in the Nature of the Offence whether the Robber takes his Victim's Property with his own Hands, or compels the latter to deliver it up. "The legal Acceptation of the Term Extortion is, the taking of Money by any Officer by colour of his Office, either where none at all is due or not so much is due, or where it is not yet due." The Two Offences of Robbery and Extortion are of a completely distinct Character; but by the proposed Law it appears to me that they would be confounded.

CHAPTER XXIV.

Note Q.

13. To the proposed Enactments in this Chapter I must strongly object, as they extend Impunity to Bigamy, or, more properly speaking, to Polygamy. Doubtless it would be quite consistent with Justice to punish more severely the Man who should, by a false Representation, induce a confiding Female to become (as she thought) his Wife, but in reality only his Concubine; but would it be befitting a Christian Legislature to avowedly leave unpunished the gross Profanation of a religious Rite by any too unprincipled and shameless Persons?

Such an Enactment could have no good Effect, and might have a very bad one. Connubial Infidelity is not of so unfrequent Occurrence that any of the existing Impediments thereto should be removed, or additional Encouragement be furnished to it; but if it should be determined to legalize such a Proceeding as the mock Marriage of Two Persons under the Circumstances supposed, it will be necessary to follow up the Law by rendering it imperative on Clergymen to perform the Ceremony. I most sincerely trust, that, whatever may be the Resolution regarding the rest of the Code, this Chapter may be expunged.

14. I have thus touched, as briefly as I could, on those Points in the proposed Code which appear to me objectionable. Fully aware of the Disadvantages under which a Person who has not enjoyed the Benefits of a legal Education labours when combating the Opinions of those who have passed a great Portion of their Lives, not only in the Practice, but in the Study of Jurisprudence, and who have been selected on account of their eminent Acquirements to discharge the high Functions of the Indian Law Commissioners, I would not, of my own Free-will, have ventured to criticise so extensive and elaborate a Production as the proposed Penal Code, but would rather have confined my Observations to such Points of it as might have been referred to me for an Expression of my Opinion. This, indeed, I have already done, on the References made by the Commissioners regarding Adultery, the Murder of Children for their Ornaments, and on some other Points. • But having been called upon to submit generally my Sentiments regarding the Code, I had no Choice; and I trust that, whatever Opinion may be entertained of the Soundness of my Objections, I shall not be deemed to have exceeded the Bounds of proper Respect by the Freedom of my Observations.

I have, &c.
(Signed) A. W. BEGBIE,
Sessions Judge.

(No. 83.) From H. SWETENHAM Esq. to H. B. HARRINGTON, Esq.

Furruckabad, Sessions Judge's Office,
17th April 1838. •

Sir,
I HAVE the Honour to acknowledge the Receipt of your Letter, No. 383, dated the 24th ultimo, relating to the proposed Penal Code prepared by the Indian Law Commissioners.

2. On a Work fraught with so much Wisdom I feel incompetent to offer any Suggestion. The Code of Procedure being supplied, the Penal Code might be forthwith advantageously

tageously enforced. Not that I conceive any material Alteration would be effected in the Administration of Criminal Justice in the Western Provinces ; but the Inconsistencies of the Law in the several Presidencies noticed by the Law Commissioners would be obviated, and the unpractised in the Proceedings of the Courts may find applicable Rules for Guidance in awarding Punishment for most Offences.

3. The Punishment in certain Cases of Homicide, Clauses 300 to 303, seems very properly extended. Fourteen Years Imprisonment, I conceive, would often prove more adequate Punishment than Seven Years, the Sentence to which a Sessions Judge is now restricted in these Cases, without Power of Reference on Grounds of Inadequacy of Punishment.

4. The Punishment, in Clause 191, for giving or fabricating false Evidence, may, perhaps, be too rigorous in some Cases. In a Case of Murder lately before me, a Woman, aged Forty, Mistress of Deceased, and her Son, a Boy, aged Fifteen, deposed as *Eye Witnesses*. It became apparent they had not witnessed the Murder. One of the Persons they accused was the actual Murderer (according to his own Confession, supported by circumstantial Proof). The Woman and Child, urged by an Infatuation common to the Natives, to strengthen, as they imagine, the Proof, and ensure Punishment (often thereby actually eluded) fabricated and gave false Evidence. Seven Years Imprisonment awarded on these Creatures, already deprived of their Protector by Murder, would have proved severe. The Minimum of Punishment enacted in the Clause under Review might, I think, in some Cases operate against the Enforcement of the Penalty. For the Words *Seven Years* in the last Line but One I would substitute *Three Years* Imprisonment as the minimum Punishment.

5. Clause 106 refers to Abetment as an Accessory after the Fact. The Punishment here awarded may, perhaps, be too lenient. A Person subsequently abetting the Crime of Murder is by this Clause liable to only Two Years Imprisonment. In the Case of Murder above cited, for example, the Murderer named the Person who had Possession of the Sword with which he committed the Deed. The Person so named acknowledged it was in his House. It was searched for and found there, stained with Blood, concealed in Oopula (Fuel). There was consequently Suspicion of his being an Accomplice in the Murder ; *Proof* only of his being Accessory after the Fact. Two Years Imprisonment is, I conceive, too lenient a Punishment in this Case. Seven Years Imprisonment might be more appropriate.

6. Clauses 43 and 44 contain in the Matter of Banishment more political than judicial Consideration. The Rules may be expedient, but they do not appear grounded on general Principles of Jurisprudence. The Propriety of the Government being vested with such Power is unquestionable. It were better, in my Opinion, excluded from a Code adapting Punishments generally in proportion to Offences ; allowing Government, as heretofore, to exercise the Right of Banishment of Europeans under Act of Parliament, which, if not existing, might, I suppose, be easily obtained.

7. Notwithstanding the Arguments advanced to the contrary by the Law Commissioners, (Note A.) in Clause 51, directing, in Cases in which an Offender is sentenced to a Fine, it shall be competent to the Court to direct a certain Term of Imprisonment in default of Payment, I would substitute the Word *incumbent* for *competent*. In consequence of repeated Changes in the Head of the Office, a Person is liable to be imprisoned for a longer Period than he would probably have been had the Time of Imprisonment in lieu of Fine been originally specified.

8. Clause 57 is, I think, objectionable. By laying open new and endless Sources for Corruption and Extortion, and by occasioning constant summary Investigations into Right of Property, the proposed Rule would be calculated to create considerable Anarchy and Confusion. The Principle of the Rule is unexceptionable ; but the Practice I disclaim. It were better, I conceive, that a Fine be levied, or, in default of Payment, Imprisonment for a definite Period be directed ; and this should discharge the Penalty of the Law.

9. Under the Head of Punishment, Clause 40, Banishment from One District to another within the Company's Territories, as now practised, appears omitted ; a Punishment liable to no Objections, I conclude.

10. Clause 46 empowers Government to remit any Punishment. No Provision appears for Mitigation or Remission by other Authorities.

I have, &c.
(Signed) H. SWETENHAM,
Sessions Judge.

J. S. BOLDERO Esq. to H. B. HARRINGTON Esq.

(No. 148.)

Sir,

Office, Sessions Judge, Agra,
9th July 1838.

I HAVE the Honour to acknowledge the Receipt of your Letter, No. 383, with its accompanying Copy of a Letter from the Officiating Secretary to the Right Honourable the Governor General, and its Enclosure from the Officiating Secretary to the Government of India

India in the Legislative Department, regarding the proposed Penal Code prepared by the Indian Law Commissioners.

2. I beg to inform the Court that I have gone over the proposed Penal Code with the greatest Care and Attention, and with every Inclination to "discover Defects or suggest Improvements."

3. Regarding it in the Light of a Theory of Criminal Justice, which it must be till the Code of Procedure is prepared, I consider the Penal Code upon the whole a most masterly Production.

4. Vesting the Interpretation of the Law in the Framers of it, instead of in its Administrators, is essential to the Preservation of the Simplicity of the Code; and will effectually guard against the Possibility of contrary Decisions being given on disputed Points of Law.

5. The Clearness and Perspicuity with which the different Classes of Offences are defined in the Penal Code will enable the Magistrates Indictments to be framed with a Distinctness and Precision they do not at present possess.

6. The Eighth Definition of grievous bodily Hurt, namely, "Such Hurt that the Sufferer is, during the Space of Twenty Days, in bodily Pain, Disease, or unable to follow his ordinary Pursuits," is I consider in the latter Part too severe, and appears to fall unequally. For instance :—

A, intending to hurt B, who is a Tailor, inflicts a Blow on B, which sprains his Ankle. Here B is not incapacitated from following his ordinary Pursuits, and the Offence would not be punishable under the Eighth Designation, which if B had been a Dawk Runner it would have been.

Again, A, intending to hurt B, a Tailor, inflicts a Blow on B, which sprains One of his Fingers. Here B is incapacitated from following his ordinary Pursuits, though if B had been a Dawk Runner he would not have been.

7. In neither of the above Cases would bodily Pain nor Disease continue for Twenty Days; and unless a Sprain is to be regarded as a Disease, Punishment would be unequal for the same Offence. The heaviest Punishment would fall on the slightest Injury.

8. It is much to be regretted that the Code of Procedure did not accompany the Penal Code; for without a thorough Knowledge of the Machinery by which it is to be carried into effect, to form a correct Judgment of how it will answer in Practice is difficult, beautiful and perfect as it now appears in Theory.

9. The Commissioners, in their Letter to the Right Honourable the Governor General, say, "There are Two Things which a Legislator should always have in view while he is framing Laws. The one is, that they should be as far as possible precise; the other, that they should be easily understood." This is undeniable. But it strikes me to the above a Third might with great Advantage be added, namely, that the Laws should be of easy Enforcement; for without this Essential, Laws, however "precise," or "easily understood," or however perfect they may appear in Theory, will be useless.

10. I trust the Court will not suppose I mean to apply this last Remark to the beautiful Code under Consideration. On the contrary, I feel every Confidence that the master Minds who framed it will experience no Difficulty in arranging the Machinery by which it is to be carried into operation.

I have, &c.
(Signed) J. S. BOLDERO,
Sessions Judge.

J. T. RIVAZ Esq. to H. B. HARRINGTON, Esq.

(No. 53.)

Civil and Sessions Judge Office, Zillah Futtehpore,
17th December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Circular Letter of Date the 24th of March last, No. 383, desiring my Opinion on the proposed Penal Code, a Copy of which was duly furnished to this Office.

2. In reply, I beg leave to state the Code has in general my Approbation. The few Defects of which I am aware are the following :—

First, the Meaning of the Expressions "rigorous" and "simple" Imprisonment is not, as I can perceive, defined.

The Punishments provided by Clauses 153, 156, 159, 160, 161, 164, and 168 are in my Judgment insufficient.

The Punishment provided for by Clause 284 is utterly insufficient, and strangely inconsistent with Clause 282, by which a heavier Punishment is awarded for a far less serious Offence than the one specified in Clause 284.

I would regulate the Quantum of Punishment for Theft with regard to the Value stolen, which does not appear to have been done.

The Punishment provided for by Clause 390 is inadequate. I would punish this Offence with regard to the Amount of Property received, and Circumstances of the Theft generally, making no Difference between the Thief and the Receiver.

I have, &c.
(Signed) J. T. RIVAZ,
Civil and Sessions Judge.

R. J. TAYLER Esq. to M. SMITH Esq.

(No. 98.) ..

Sir,

Office of Civil and Sessions Judge,
Zillah Mirzapore, 17th April 1839.

I HAVE the Honour to acknowledge your Circular Letter, No. 383, dated the 24th March 1838, and left unanswered by my Predecessor.

2. In reply, I beg to state that I have attentively perused the different Chapters of the Criminal Code, with the admirable Notes appended to them, and I am of opinion that the System of Penal Law proposed by the Indian Law Commissioners is far superior to any now existing in these Provinces, and one that might, with Care and Judgment, be carried into effect.

3. In a Work so extensive and complicated there are doubtless several Imperfections, but there is so much deserving Praise, and the Penal Code as a whole is so much clearer and better arranged than the Criminal Regulations, that I shall not attempt to blame or criticise the Labour of Years by Men of first rate Talent, to do which fairly I have neither Leisure or Inclination, even if I possessed the Ability.

4. The few Blemishes and Inconsistencies that have most attracted my Attention are noticed in the following Observations :—

1st. I have no Remarks to offer on the 1st Chapter of General Explanations.

2d. In the Chapter of Punishment, Section 45 appears at variance with Section 42.

3d. In Section 48 Imprisonment for Life shall be reckoned as equivalent to Twenty-four Years, consequently a Boy aged Ten Years imprisoned for Life would be released at Thirty-four Years of Age, or about Half the natural Term of Life.

4th. 50. An unlimited Fine is liable to obvious Objections.

5th. Chapter III. The general Exceptions and the Right of private Defence appear very well constructed and illustrated.

6th. Chapter IV., of Abetment. The Illustration to Section 100 (a) is superfluous, as in the 6th Section in the preceding Chapter "nothing is an Offence which is done by a Child under Seven Years of Age"

7th. The Illustration to Section 106. A, knowing that B has murdered Z, assists "B to hide the Body. A is liable to Imprisonment of either Description for One Twelfth Part of the Term of Imprisonment for Murder, that is to say, Two Years." The Crime committed by A should be, in my Opinion, as Accessory to Murder after the Fact.

8th. Chapter VI., of Offences relating to the Army and Navy. The Penalty in every Instance appears insufficient. There is a strange Exception to Section 124 : that the Provision does not extend to the Case in which the Harbour is given by the Husband or Brother appears unnecessary, for Female Soldiers or Sailors are never heard of in this Country.

9th. Chapter VII. The Punishments proposed for Offences against the Public Tranquillity are in my Opinion too lenient.

10th. Chapter VIII. The Law contained in this Chapter appears much wanted ; and the following Chapter IX. of Contempts of the lawful Authority of Public Servants, is excellent.

11th. Chapters X., XI., XII., and XIII. The Offences against public Justice, the Revenue, relative to Coin, and Weights and Measures, all seem very well constructed, and the Notes regarding them very valuable.

12th. The Punishments for Offences affecting the Public Health, Safety, and Convenience are too lenient, but they seem better proportioned in Chapter XV., where the Offences relate to Religion and Caste.

13. Chapter XVIII. I think the Definition of the Offences affecting Human Life might be better. In place of voluntary culpable Homicide being Murder, Manslaughter, voluntary culpable Homicide by Consent, and voluntary culpable Homicide in Defence, I should suggest the Terms used in English Law ; 1st. Justifiable Homicide ; 2d. Excusable Homicide ; and 3d. Felonious Homicide, the last being either Murder, Manslaughter, or Self-destruction.

5. The remaining Chapters on Offences against Property, those relating to Documents and Property Marks, the illegal Pursuit of legal Rights, the criminal Breach of Contracts of Service, of Defamation, of criminal Intimidation, Insult, and Annoyance, appear in general very good ; but the Chapter of Offences relating to Marriage, and the Notes, are liable to many and obvious Objections.

I have, &c.
(Signed) R. J. TAYLER,
Officiating Civil and Sessions Judge.

(No. 125.) A. C. HEYLAND Esq. to H. B. HARRINGTON Esq.

Zillah Ghazeeepore, 11th April 1838.

Sir,

It is with much Diffidence that I am induced to make any Remark on the proposed Penal Code, but, in conformity with the Instructions contained in your Circular, No. 383 of the 24th ultimo, consider it my Duty so to do, when I conceive that a Chance of Benefit may possibly accrue, and trust that the Court of Nizamut Adawlut will pardon me should they deem it misapplied or inapplicable. On the proposed Penal Code.

2. Considering that the Nature and Number of serious Offences which are of the most frequent Occurrence in almost every District of Bengal and these Provinces, and in the Trial of which the Courts of Sessions are mostly occupied, are "Murder," "culpable Homicide," "Affray attended with Homicide," and "severe wounding," and I believe on Examination that the probable Cause of fully One Half of those Offences will be found to have originated in the supposed Right of private Defence of Property, such as Crops, Land, and Watercourses,--the Object, therefore, of the proposed Penal Code should doubtless have been strongly and most particularly directed to this Subject, endeavouring as far as possible to put a stop to such frequent Perpetration of these Offences, and in order to prevent any Misconception on the Matter of how far Persons were authorized by the Laws to protect such Property, which I regret to apprehend has not been the Case.

3. In the Volume of the proposed Penal Code, on the Subject of the Right of private Defence, Clause 74, it is stated: "Every Person has a Right to defend his own Property, and the Property of every other Person, against every Act which is an Offence falling under the Definition of Mischief, or Criminal Trespass, or an Attempt to commit the same; subject to these Restrictions, that there is no Right of private Defence in which there is Time to have recourse to the Protection of the public Authorities, in the Manner indicated in the Code of Criminal Procedure, and that the Right of private Defence does not extend to the inflicting of more Harm than is necessary to inflict for the Purpose of Defence."

4. To me the above admits of such a Construction that endless Affrays and Breaches of the Peace must be the necessary Consequence. The Court of Nizamut Adawlut cannot but be too well acquainted with the very common Occurrence of such a Case as A, with a Posse of Persons, commencing to take forcible Possession of the Crops of B, or the cutting of B's Watercourse. A and his Party fall under the Offence of Mischief; and B and his Party have not Time to have recourse to the public Authorities, for in the meantime the Crops may be taken, or the Reservoir drained of its Water, which cannot be replaced; therefore B and his Party have a Right to defend that Property against A and his Party as long as they continue in the Commission of the Act, and thus to battle it with them until either Party is vanquished.

5. The Evil that is thus likely to arise is but too evident; and there is doubtless a wide Difference between this Species of Aggression and that by a Band of Dacoits; and however little disposed the Natives of this Country may be to oppose the latter, they are by no means backward in opposing their Neighbours in an Act of Trespass, or on any slight Provocation, and are only, I conceive, much too ready to make use of their Swords and Clubs on these Occasions; and a definitive Act to prevent their taking the Law into their own Hands, where there may be an Uncertainty as to the Right of Property, would, in my Opinion, be attended with the greatest Benefit, and without much Risk of having a prejudicial Effect on the Spirits of the People. This might, I conceive, be effected by defining the Sort of Property over which the Right of private Defence did not extend, such as Watercourses, and Crops not gathered in from the Lands, &c. &c.

A Clause, therefore, expressly made to state that "The Right of private Defence of Property does not extend to that of Land, Crops or Produce not gathered in from the Land, Watercourses, or any Reservoir for holding Water," would, I am of opinion, be a great Means towards preventing many serious Crimes and Breaches of the Peace. The Right of Defence, by the proposed Code, Clause 80, does not in such Cases extend to the voluntary causing of Death; but when an Opposition to an Aggression of this Description is permitted, how difficult it is to say what may not be the Consequence.

I am not at present sufficiently prepared to enter into the Arguments on the Subject of the general imposing of Fines in all Criminal Cases; but, however good the Theory, the Practice of levying Fines by Distraint in the Criminal Courts of this Country I feel convinced would on many Grounds be very objectionable.

I am, &c.

(Signed) A. C. HEYLAND,
Officiating Sessions Judge

A. FRASER Esq. to H. B. HARRINGTON Esq.

(No. 468.)

Zillah Paneeput, Magistrate's Office.

Sir,

15th December 1838.

I HAVE the Honour to acknowledge your Letter, No. 1,544 of the 27th ultimo, calling Attention to a previous Circular, No. 383 of the 24th March last, and requiring my Opinion in regard to the proposed Penal Code. It did not strike me that the first-

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mentioned Circular *required* any such Opinion, or its Expression should not have been so long delayed.

2. The Extent of my Duty at present, as Collector of the District, renders it impossible for me to devote to the Examination of this Code the Time which could alone justify me in offering any very decided Opinion as to its Suitableness in its Details. I have, however, read it with Attention, and my general Opinion in regard to it is certainly in its Favour. With some Alteration in the Clauses wherein it appears to aim at too much Precision, and is thereby likely to render the Operation of those Clauses either vexatious or nugatory, and with an Adaptation to it of the System of Procedure (which, as the Commissioners themselves remark, could, I have no doubt, very easily be made), I see little to prevent its immediate Introduction, and I feel confident that the Result would be a more satisfactory and certain Administration of Law than at present exists.

I have, &c.

(Signed) A. FRASER, Magistrate.

C. W. FAGAN Esq. to H. B. HARRINGTON Esq.

Zillah Mynpoory, Magistrate's Office,
30th January 1839.

Sir,

In reply to your Letter, No. 1,581, dated 15th December 1838, I have the Honour to submit the following Pages, containing such Alterations and Suggestions as appear to me might be advantageously made to the Penal Code as published by the Law Commissioners.

I have endeavoured, as far as I was able, to assimilate the Phraseology of these additional and amended Clauses to that used in the Code; and for Facility of Reference I have arranged them under their respective Headings of the Chapters of the Code.

It may also be necessary to remark, that, in fixing any new Clause which has Reference to or should follow any particular Clause of the Code, I have used a fractional Number, in addition to the integral Number of the Clause in the Code.

I trust, however, that I shall meet with the Indulgence of the Court, in case it should appear that my Views are erroneous, or that I have been betrayed into any Inadvertency, in consequence of not having had Leisure to pay sufficient Attention to the Code in all its Generalities and Details.

I have, &c.

(Signed) C. W. FAGAN, Acting Magistrate.

CHAPTER III.

Clause Additional, 1.—Whoever shall commit any of the Offences described in this Code, and shall become insane subsequent to the Commission of the Offence, shall not be liable to Punishment for such Offence.

NOTE A.

The Provision contained in this Chapter is by no means new to the Penal Law, nor does there exist, as far as I am aware, any Objection to its forming Part and Portion of this Code.

The enlightened Spirit of the Age has placed itself in opposition to the Infliction of all barbarous Punishment, and no Punishment can be so justly characterised as such, as One which would present the lamentable Spectacle of the Infliction of the Rigours of the Law on the Victim of Insanity. Such an Infliction would not only be abhorrent from the humane Feelings of the Community, but it would have a most impolitic Effect, by arming those Feelings against the Law; while at the same Time the Fact of Insanity having been superinduced would afford a most violent Presumption of its having previously existed in a latent State, leading to the Inference of the Punishment having been unjustly inflicted.

CHAPTER V.

Of Offences against the State.

Clause Additional, 113½.—Whoever shall wilfully publish and disseminate, by Word, by Writing, by Deed, by Signs, or by visible Representations, false and pretended Prophecies tending to excite Doubts of the Stability of the Government established by Law in the Territories of the East India Company, shall be punished with Banishment for Life or for any Term from the Territories of the East India Company, to which Fine may be added, or with simple Imprisonment for a Term which may extend to Three Years, to which Fine may be added, or with Fine.

Clause Additional, 114½.—Whoever wages War against the Government of any Power at Peace with the Government established by Law in the Territories of the East India Company, or attempts to wage such War, or by Instigation, Conspiracy, or Aid previously abets the waging of such War, shall be punished with Imprisonment of either Description for a Term which may extend to Three Years, and shall not be less than One Year, and shall also be liable to Fine.

Clause

Clause Additional, 115½. 2.—Whoever counterfeits the Seal of the Government established by Law in the Territories of the East India Company, or makes any Die for the Purpose of counterfeiting such Seal, or is in possession of any Implement or Material, with the Intention of employing the same for counterfeiting such Seal, or is in possession of any Document bearing such counterfeited Seal, or whoever previously abets, by Instigation, Conspiracy, or Aid, the counterfeiting such Seal, without the Territories of the East India Company, shall be punished with Imprisonment of either Description for a Term which may extend to Seven Years, and shall also be liable to Fine.

Clause 115½. 3.—If any Person by doing anything whereby he commits an Offence under the last preceding Clause, also commits an Offence under any other Clause of this Code, the Punishment shall be cumulative.

Note A.—The Offence defined in this Clause, being one of a most dangerous Nature to the British Rule, requires to be expressly provided for by a separate Enactment, as it cannot be reached by any of the Clauses of this Chapter.

The Offence may be committed without any Attempt to excite Feelings of Disaffection, and it would therefore not be cognizable under Clause 113.

The Credit attached to fictitious Prophecies is One of the Superstitions so prevalent over the East, and in no Country has it taken so deep a root as in the Regions of Hindostan. No wise Government would unnecessarily take notice of mere Straws floating on the Surface of the Current of public Opinion, but it would be wanting in Watchfulness if it did not carefully restrain the Dissemination of Doctrines subversive of its mere Existence,—Doctrines not the less pernicious from their having obtained a certain religious Sanction.

Note B.—The Object of this Clause is to protect Governments at Peace with the British Government. Clause 114 only protects Governments in Alliance with the British Government, while Clause 115 only takes cognizance of Offences committed in a certain Locality, i.e. within the Territories of the British Government. The sacred Interests of Peace, however, and of Justice, demand that Protection should be extended to both; while the Difference in the Punishment which I have affixed will, as far as Policy and Expediency are concerned, be a sufficient Distinction to mark the superior Regard which we entertain towards those Nations which are in Alliance with our own.

Note C. C.—The Offence herein described and provided for is of so serious a Nature that it appears highly impolitic to allow it to be noticed only in a transient Manner under the Provisions of the Chapter against Forgery; and as the Degree of Punishment is proportioned to the Heinousness of the Crime, the accumulated Punishment provided in both the Chapters will only be sufficient to meet the portentous Consequences which might result from so treasonable an Act as the Counterfeiture of the Public Seal. A proper Regard for Classification seems also to require that, being intrinsically an Act against the State (in which Light it is regarded by other Codes), it should be included in the Chapter reserved for such Offences.

CHAPTER VI.

Army and Navy.

Exception to Clause 124, Amended.—By omitting the Words “ Husband or ” before Wife.

Note A.—The Alteration in the Clause consists in the Omission of the Words “ Husband or,” as they are obviously superfluous, as the Soldier or Sailor is the Person referred to by the Words “ to whom the Harbour is given.” Nor is it a sufficient Answer to this Objection that, as Experience and Military Annals have shown, Women have sometimes been so hardy and so bold as to perform all the Duties of a Soldier or Sailor, since, though such is a possible Case, the Law does not recognize Women in its Definition for a Soldier or Sailor.

CHAPTER VII.

Public Tranquillity.

Clause 135½, Additional.—Whoever, while committing the Offence described in the preceding Clause, remains armed with any Weapon for shooting, stabbing, or cutting, or makes Preparation for committing the Offence of rioting by arming himself with any Weapon whatever, shall be punished with Imprisonment of either Description for a Term which may extend to Three Years, or Fine, or both.

Clause Additional.—Whoever, knowing that a riotous Assembly has taken place, and being called upon by the Magistrate or other chief Police Officer to aid in dispersing the riotous Assembly, fails to give his Aid in suppressing the Riot, shall be punished with Fine, which may extend to 500 Rupees.

Exception.—This Provision does not extend to Women or Children under sixteen Years of Age, or to any other Persons who are rendered incapable by Age, Disease, or Infirmary.

Clause Additional.—Whoever shall maim, wound, or kill any Person committing the Offences described in the Clauses of this Chapter, after the riotous Assembly has been

commanded to disperse in the Manner described in the Code of Procedure, shall be held guiltyless.

Clause Additional.—Whoever, having joined a riotous Assembly of Twelve or more Persons, shall by Force prevent the reading of the Proclamation for the Dispersion of such Assembly, in the Manner prescribed by the Code of Procedure, shall be punished with Imprisonment of either Description for a Term which may extend to Five Years, or Fine, or both.

Clause Additional, 5.—If any Person, by doing anything whereby he commits an Offence under the last preceding Clause, also commits an Offence under any Clause of this Code, the Punishment shall be cumulative.

Note A.—The Offence referred to in this Clause being one of an aggravated Nature, and consequently deserving of a higher Degree of Punishment than is awarded to the simple Offences contained in Clauses 129, 132, and 135, it becomes expedient to class it under a separate Head, as it differs from Clause 129 and 135 in the important Facts of being armed with offensive Weapons, and from Clause 152 in the equally material Circumstance of Continuance in a riotous Assembly after a legal Proclamation for its Dispersion.

Note B.B.—The Principle of this Provision is recognized by the English and other Penal Codes, and I am not aware that sufficient Grounds exist for its Omission in the present Chapter. Of the Obligation that every Subject is under to aid the ministerial Authorities in the Preservation of the public Peace there cannot be any Doubt, and it is therefore only requisite to specify the Classes who from especial Causes may be considered exempt from the Obligation to such Co-operation. This has been done in the Exemption immediately following; but it may be noted that, in opposition to the English Law, Clerical Persons have not been considered to be relieved from their Duties as Citizens, while on the other hand their Exhortations and Injunctions to the Conservation of the Peace will on most Occasions be as effectual as personal Exertions to the Attainment of the Object to which they are directed, and at the same Time be in keeping with their sacred Calling.

Note C.—As on Occasions of rioting Crimes of the deepest Dye are likely to be committed, in case a public Servant fails energetically to perform his Duty, and as such a Performance cannot be expected from him unless he feels himself to be protected by the Law in such a Way as cannot admit of Cavil, and as some specific Act should be constituted the Limit the Transgression of which on the Part of the Rioters should justify the active Interposition of Authority, the reading of the Proclamation to disperse appears to be the Measure the best adapted to impress Rioters with a due Sense of the Danger to which they expose themselves by illegally continuing Members of a riotous Assembly.

Note D.—The Proclamation to disperse is the main Resource on which the Civil Authority has to depend, short of actual Force. To give it Efficiency, it must be respected; and to insure its Respect it must be guarded by the severest Penalties, and the more it is respected the less Necessity will there be to have recourse to actual Force.

The Prevention by Violence of the reading of the Proclamation is the most serious Offence immediately connected with the Subject of rioting, and, being a specific Offence, should be specifically provided for, for though it is punishable by Clause 179 of Chapter IX. as an Interruption to a public Servant in the Discharge of his public Functions, the Punishment is obviously inadequate.

CHAPTER VIII.

Clause Additional, 144.—Whoever, being in any Office which gives him legal Authority to keep Persons in Confinement, while keeping any Person in Confinement who is charged with or is convicted of any Crime or Misdemeanor uses Violence towards such Person, and thereby extorts a Confession from such Person, or induces such Person to become an Approver against his Will, shall be punished with simple Imprisonment for a Term which may extend to Two Years, or Fine, or both.

Clause Additional.—If any Person, by doing anything whereby he commits an Offence under the preceding Clause, also commits an Offence under any other Clause of this Code, the Punishment shall be cumulative.

Note A.A.—The Violence which forms the main Part of the Offences referred to in this Clause would in ordinary Occasions be punishable as an Assault under Chapter XVIII. The Circumstances, however, under which the Persons by whom and the Purpose for which it is used give it a distinct and highly aggravated Character. It is an Offence unhappily too prevalent amongst the subordinate Officers to whom the Police Administration is intrusted, and the Impunity with which it is much to be feared they are guilty of it renders them heedless about its Perpetration. When, however, it is recollected that it leads to a complete Perversion of Justice, and that it is a Source of the grossest Injustice and Detriment to the Properties and Liberties of Individuals, before a Remedy can be applied by superior Authority, this Provision will, I am persuaded, be considered neither uncalled for nor inexpedient.

CHAPTER IX.

Of Contempts of the lawful Authority of Public Servants.

Clause 171 Amended.—Whoever offers any Resistance to the taking into Custody of himself or of any other, under the lawful Authority of any public Servant, as such,

or of any Body of public Servants, as such, shall be liable for such Resistance to the whole Punishment assigned to the Offence for which the Person in whose Favour the Resistance was offered was directed to be taken into Custody.

Clause Additional, 172½.—If any Person, doing anything whereby he commits an Offence under the preceding amended Clause 171, shall also have committed an Offence under any Clause contained in any other Chapter of this Code, the Punishment shall be cumulative.

Clause 173 Amended.—Whoever intentionally rescues or attempts to rescue any Person from any Custody in which that Person is detained under the lawful Authority of any public Servant, as such, or of any Body of public Servants, as such, shall be liable for such Rescue or Attempts to rescue to the whole Punishment assigned to the Offence for which the Person in whose Favour the Rescue or Attempt to rescue was made was directed to be taken into Custody.

Note A.—The Alteration in this Clause consists in the Degree of Punishment assigned to the Offence which is referred to. The Principle on which the Alteration has been made is, that it is desirable to apportion the Degree of Punishment to the Heinousness of the Crime. If the Words of the Original are retained, all Instances of Resistance to lawful Authority will be placed upon the same Footing. Resistance to Warrant on a Charge of Theft and on a Charge of Dacoity will be punishable in the same Degree. But it is obvious that this would not only be oppressive to the Individual but it would defeat the Ends of Justice; for it would so happen that in Cases of petty Theft the Punishment would exceed that for the Offence itself, while in heinous Crimes, it would act as a most powerful Excitement to Resistance to lawful Authority, for heinous Offenders, or the Friends and Relations of Offenders of such a Stamp, would not have any Hesitation to incur the trifling Penalty contained in this original Clause, possessing, as they would, every Chance of saving themselves or their Friends, by a successful Resistance, from the heavier Penalties due to their Crimes. If, therefore, the above Objections to the Words of the original Clause have any Weight, it will be necessary to make a similar Alteration in Clause 173.

CHAPTER X.

Offences against Public Justice.

Clause 188½, Additional.—Whoever, in any Stage of any Judicial Proceeding, being bound by an Oath, or by a Sanction tantamount to an Oath, to state the Truth, states that to be true which he could not possibly know to be true, or states his Belief in the Truth of a Fact which he knows to be false, touching any Point material to the Result of such Proceeding, or in the Truth of which he could not possibly have any Belief, is said "to give false Evidence."

Clause 196½, Additional.—Whoever fraudulently or for the Purpose of Annoyance previously abets, by Instigation, Conspiracy, or Aid, the Institution of any Suit in a Court of Justice, knowing that the Person instituting such Suit has no just Ground to institute such Suit, shall be punished with Imprisonment of either Description for a Term which may extend to One Year, or Fine, or both.

Clause 196½, Additional.—Whoever, belonging to the Profession of the Law, commits the Offence described in the last preceding Clause, shall be punished with Imprisonment of either Description for a Term which may extend to Two Years, or Fine, or both.

Clause 206, Amended.—Whoever, except as herein-after excepted, knowing that any Person has escaped from any Custody in which such Person was lawfully detained in pursuance of the Sentence of a Court of Justice, or by virtue of a Commutation of such Sentence, or has returned from lawful Transportation or Banishment, the Term of such Transportation or Banishment not having expired, and the Punishment of such Person not having been remitted, gives Harbour, Assistance, or Intelligence to such Person, with the Intention of saving such Person from the legal Consequences of such Escape or Return, shall be considered an Accessory after the Fact to the Crime or Misdemeanor for which the Prisoner escaping shall have been sentenced.

Clause 206½, Additional. Whoever shall knowingly and wilfully enable or aid any Person to escape from Custody who is in Custody in pursuance of the Sentence of a Court of Justice shall, be considered an Accessory after the Fact to the Crime or Misdemeanor for which the Prisoner escaping shall have been sentenced.

Clause Additional, 206½.—Whoever, being a public Officer, and having any Person in Custody in pursuance of the Sentence of a Court of Justice, shall intentionally and voluntarily allow such Person to escape, shall be liable to a Punishment equal to that to which the Person escaping may have been sentenced.

Clause Additional.—Whoever shall demand or shall take any Reward from any Individual, under an Engagement to procure the Restoration of his stolen Goods to him, shall be liable to the Punishment to which the principal Felon would have been liable.

Exception.—This Provision will not extend to the Case in which the taking of the Reward shall cause the Apprehension and Conviction of the principal Felon.

Clause Additional.—Whoever, having been robbed, shall take back his stolen Property, or receive other Compensation for such Property, under an Engagement not to prosecute, or shall do any Act which may lead to a reasonable Presumption of his having entered

into such an Engagement, shall be liable to Fine which may extend to 500 Rupees and shall not be less than 50 Rupees.

Clause Additional.—Whoever, under any of the Provisions of this Code, shall give public Information regarding the Commission of any Crime or Misdemeanor, and shall compound with the Offender, or shall take any Money or other valuable Thing, or the Promise of any Money or other valuable Thing, from him, with the view of saving him from the Penalty of the Law, shall be liable to Imprisonment which may extend to Three Months, and to Fine which may extend to 100 Rupees.

Clause Additional.—Whoever directly or indirectly gives or offers to give to any public Officer engaged in the Administration of Justice any Gratification whatever, as defined in Chapter VIII. of this Code, with the view of influencing him in the Exercise of his official Functions, shall be punished with Imprisonment of either Description for a Term which may extend to Three Years, or Fine, or both.

Exception.—This Provision shall not extend to the Case in which the Giver of the Gratification shall cause the Apprehension and Conviction of the Receiver.

Clause Additional.—Whoever shall voluntarily take, or shall administer or cause to be administered, any illegal Oath, binding the Person taking it to commit any illegal Act, shall be punished with Imprisonment of either Description which may extend to a Term of Seven Years and shall not be less than Three Years.

Clause Additional.—Whoever shall voluntarily bind himself, or shall bind any Person, or cause him to be bound, by a Sanction tantamount to an Oath, to commit any illegal Act, or to omit any Act he is legally bound to do, shall be punished with Imprisonment of either Description which may extend to a Term of Seven Years and shall not be less than Three Years.

Clause Additional.—Whoever, under Compulsion, shall bind himself or another Person, or shall cause him to be bound, by an unlawful Oath or Sanction tantamount to an Oath, of the Nature described in the Two preceding Clauses, and shall not reveal the same within Ten Days after the Violence has been removed, shall be punished with Imprisonment of either Description which may extend to a Term of Three Years and shall not be less than One Year.

Clause Additional.—Whoever, not being a public Servant in any Department, carries any Token resembling any Token carried by any public Servant in any Department, shall be punished with Imprisonment of either Description for a Term which may extend to Three Months, and Fine which may extend to 500 Rupees, or both.

Note A.—The Purport of this Supplemental Clause is to define Two Species of Perjury which are not included in the original Definition; for it may often happen, in the first place, that the Substance of the Statement deposed to by the Witness may be true in its Tenor, while the Circumstances may be such that it was impossible for the Witness to be personally cognizant of the Fact. In this Case the Truth is a mere Incident, while the Witness is obviously as much perjured as if the Facts to which he deposed had no Reality. Moreover, on numerous Occasions it is necessary, where presumptive Evidence is produced, to examine Individuals regarding, not the Reality of certain Facts, but regarding their *Belief* in the Existence of such Facts.

It is true that in this case the Testimony is not absolute, but as it is material to the due Decision of the Question at issue, and the Falsehood is wilful, and arises from a deliberate Intention of injuring an Individual, and of perverting Justice, it differs in no essential Point from absolute Perjury as described in the original Clause, and should be equally liable to the Penalties of the Law.

Note B.—There is no Provision in this Code for the Offences adverted to in these Two Clauses. They are punishable by other Codes of Law, and India is certainly not the Country where excessive Encouragement should be given to unfounded Litigation, for the Facilities to Litigation which exist in this Country, and the Litigiousness which is characteristic of the People, render it desirable that no Check should be removed which is consonant with the Principles of Justice, while it is no less a necessary for proper Administration of Justice that the Time of Judicial Officers should not be engrossed by frivolous and vexatious Complaints.

If, therefore, the Grounds for adopting this Clause have any Weight, they will *à fortiori* be applicable to those Individuals whose professional Education gives them the fullest Opportunities of judging what are and what are not insufficient Grounds for the Institution of a Suit; and as the personal Interest of such Persons would naturally lead them to transgress the proper Limits, the Law must interpose in regard to them with a heavier Penalty than what would be necessary for the Community.

Note C.—It is proposed by these Three Clauses, the first of which is a proposed Amendment, and the other Two additional Clauses, to guard more efficiently against the Commission of the Offences referred to, by enhancing the Degree of Punishment; for to retain the Punishment prescribed in the Original would have the same moral Effect as is described in Note A to the amended Clause, 171 of Chapter IX., and if the Grounds therein assigned are sufficiently conclusive to sanction the Adoption of the proposed Amendment in that Chapter, their Applicability will be stronger in the present, where the runaway Convict has passed through the Ordeal of a legal Trial, and been duly sentenced.

Note D.—These Three Clauses relate to Offences which are unprovided for by this Code, and the Nature and Tendency of which are identical, as they all lead to the Protection of Criminals from the Penalties of the Law, arising from Motives of pecuniary Interest existing in those who, from their Position, and from the Information of which they are possessed, would otherwise be a most efficient Instrument of ensuring their Punishment.

These Offences are also of such repeated Recurrence, and present such Obstacles to the Conviction of Offenders, that it is much to be feared that, if they are not checked by especial Provisions declaratory of their Criminality, they will be excessively pernicious to the whole System of Police.

To give, however, every Facility to the Conviction of Offenders, an Exception has been framed, which it seems expedient to admit on general Grounds.

It would also be obviously objectionable to place the Sufferer by Theft on the same Footing as the Offenders adverted to in the Two other Clauses, but it would be equally so to allow him with Impunity to defeat the Ends of Justice for his own private Interest, since if this were to be admitted the whole Machinery for the Administration of Justice would be unnecessary.

Note E.—Every Means should be adopted for insuring the Purity and Integrity of Judicial Officers, and every Attempt to undermine these necessary Qualities, being an Offence against the public Interests of the most sacred Kind, should be visited with the severest Penalties. Nor is it sufficient that the Conduct of One of the Parties implicated in the Offence should meet with Condemnation. Of their Participation in the Guilt there cannot be any Doubt, and they should consequently share the Punishment.

Circumstances, however, may exist, under which the Punishment of One Party can only be secured by the Pardon of the other, and with the view of meeting such a Contingency an Exception has been annexed to the Clause. Justice will thus be benefited, and the Law will have done its Duty in declaring and punishing the Criminality of both Parties.

CHAPTER XI.

Of Offences relating to the Revenue

Clause 225½, Additional. Whoever, not being legally authorized to send a Letter or Packet free of Postage, intentionally sends any Letter or Packet to any Post Office with any Signature or Superscription whereby it is or may be received exempt from the Payment of Postage, shall be punished with Fine which may extend to 100 Rupees.

Clause 225½, Additional.—Whoever sends or causes to be sent any Letter or Packet by an illegal Post shall be punished with Imprisonment of either Description, which may extend to Three Months, or Fine which may extend to 1,000 Rupees, or both.

Exception.—The Provisions of Clause 225, and Clauses 225½, 1 and 2, do not extend to the Case in which any Letter or Packet is sent by a private Messenger.

CHAPTER XII.

Offences relating to Coin.

Clause Additional, 1.—Whoever, knowing any Coin to be counterfeit, and delivering the same to any other Person as genuine, has at the same Time more counterfeit Coin in his Possession, shall be punished with Fine which may extend to 100 Rupees, and, in addition, to Ten Times the Value of the Coin of which such counterfeit Coin is a Counterfeit.

Clause Additional, 2.—Whoever shall commit a Second Offence of the Nature described in Clause 242 within Fifteen Days subsequent to the Commission of the First Offence shall be punished with Fine, which may extend to 100 Rupees, in addition to Ten Times the Value of the Coin of which such counterfeit Coin is a Counterfeit.

Clause Additional, 3.—Whoever shall refuse to receive any Coin in satisfaction of any Demand, which Coin has been declared by competent Authority to be a legal Tender, shall be liable to Fine which may extend to 100 Rupees.

CHAPTER XIII.

Weights and Measures.

Clause Additional, 1.—Whoever pursues any Trade requiring the Use of a Balance, Weight, or Measure, and, being directed by competent Authority to produce such Balance, Weight or Measure, fails to yield Obedience to such Order, or offers any Hindrance or Obstruction to any Person duly authorized to examine such Balance, Weight, or Measure, shall be punished with Imprisonment of either Description which may extend to One Year, or Fine, or both.

CHAPTER XIV.

Public Health, Safety, or Convenience.

Clause 258, Amended.—By inserting the Words “at Places or” before “between Places.”

Clause 260, Amended.—By erasing the Words “as wholesome” between “Sale” and “any Food.”

Clause 272½, Additional.—Whoever has Charge or Possession of any Building intended for the public Convenience, and omits to take such Order with it as he believes to be sufficient to guard against any probable Danger to Human Life or of grievous Hurt, shall be punished with Imprisonment of either Description for a Term which may extend to Six Months, or with Fine which may extend to 2,000 Rupees, or both.

Additional Clause.—Whoever, in any public Way or Thoroughfare of any Town or Village, shall be openly drunk, to the Annoyance of those who pass along that Way or Thoroughfare, shall pay, for the 1st Offence a Fine of 2 Rupees, for the 2d, 5 Rupees, and 10 Rupees for every subsequent Offence.

273½, Additional Clause.—Whoever sets at large any Animal the Enlargement of which is attended with probable Danger to Human Life or bodily Hurt shall be punished, as in Clause 273.

Clause Additional.—Whoever gives Motion to or drives any Vehicle, or rides or navigates any Vessel, or does with any poisonous Substance, or with Fire or any combustible Matter, or with any explosive Substance, or with any Machinery, or with any Building which he has a Right to pull down and repair, or with any Animal in his Possession, any Act so rashly and negligently as to indicate a Want of due Regard of the Property of any Person, or omits to take what he believes to be sufficient Precaution against any probable Danger to such Property, shall be punished with Imprisonment of either Description which may extend to One Month, or Fine which may extend to 500 Rupees, or both.

Clause 265, Amended.—By inserting the Words “gives Motion to or” after “whoever.”

Clause Additional.—Whoever keeps or has Charge of any Building for the Reception or Entertainment of Travellers, and refuses to receive or to entertain any Traveller, without good and sufficient Cause, shall be punished with Fine, which may extend to 100 Rupees.

Clause Additional.—Whoever in any public Way or Thoroughfare openly and notoriously pursues any Means of Livelihood or performs any Act which is repugnant to the Religion, subversive of the Morals, or opposed to the Feelings of the Public, shall be punished, for the 1st Offence, with a Fine which may extend to 50 Rupees, for the 2d, to 100 Rupees, and to 200 Rupees for every subsequent Offence.

CHAPTER XV.

Of Offences relating to Religion and Caste.

Clause 284, Amended.—By inserting the Words “or which is offensive to his religious Feelings” after “Loss of Caste.”

Clause Additional, 1.—Whoever, with the Intention of wounding the Feelings or insulting the Religion of any Person, causes any Disturbance in any Churchyard, Burial Ground, or other Place of Sepulture, shall be punished with Fine which may extend to 100 Rupees and shall not be less than 10 Rupees.

Clause Additional, 2.—Whoever omits to take such Order with any Animal in his Possession as he believes to be sufficient to guard against any probable Offence to the religious Feelings of any Person shall be punished with Imprisonment of either Description which may extend to One Month, or Fine, or both.

CHAPTER XVI.

Of illegal Entrance into and Residence in the Territories of the East India Company.

Clause 287, Amended.—By inserting the Words “or the Subject of any Government of Europe or of America,” after “King.”

Clause 288, Amended.—By inserting the Words “or the Subject of any Government of Europe or of America” after “King.”

Clause 289, Amended.—By inserting the Words “or the Subject of any Government of Europe or of America” after “King.”

CHAPTER XVIII.

Of Offences affecting the Human Body.—Of Rape.

Exception to Clause 359, Amended.—By inserting the Words “unless the Woman shall have been married without her Consent.”

Clause 359½, Additional.—Whoever in any way aids or abets any Person in a Marriage with a Woman without her free and intelligent Consent, in consequence of which Marriage such Person has sexual Intercourse with the Woman, with or without her Consent, shall be punished with Imprisonment of either Description for a Term which may extend to Fourteen Years and must not be less than Two Years, and shall also be liable to Fine.

CHAPTER XIX.

Offences against Property.

Additional Clause.—No Woman committing any of the Offences described in Clauses 363 to 374 and Clauses 383 to 440 of this Chapter shall be liable to Punishment for such Offence, if the Offence shall have been committed by her while in company with or by the Instigation and Coercion of her Husband.

Clause 393 amended and added to.—11th. By falsely pretending to be possessed of any Faculty, real or imaginary.

12th. By falsely pretending to be possessed of supernatural Powers.

Illustrations.

(n). A pretends to be a Wizard or Witch.—A cheats by Personation.

(o). A pretends to be able to avert Hail, or to cause Rain to fall.—A cheats by Personation.

(p). A pretends to the Science of discovering stolen Goods.—A cheats by Personation.

CHAPTER XX.

Of Offences relating to Documents.

Clause 453½, Additional.—Whoever, being a public Servant in any Department, and being as such intrusted with the keeping of any Account, fraudulently attempts to destroy or to deface or fraudulently secretes any Document, shall be punished with Imprisonment of either Description for a Term which may extend to Two Years, or Fine, or both.

Clause Additional.—Whoever, being intrusted with the Preparation or the keeping of any Document required by any public Department, shall refuse to prepare such Document, or to produce it for the Inspection of any Person concerned, or desirous of examining it, or of any Person competent to require the Preparation and Production of such Document, shall be liable to Fine which may extend to 200 Rupees and shall not be less than 50 Rupees.

CHAPTER XXIII.

Of the criminal Breach of Contracts of Service.

Clause 463½, Additional, 1.—Whoever, being bound by a lawful Contract to perform personal Service, illegally omits to perform it, or performs it in a careless and negligent Manner, intending or knowing it to be likely that such illegal Omission, or careless and negligent Performance, will cause Injury to some Party, shall be punished with Imprisonment of either Description for a Term which may extend to One Month, or Fine which may extend to 100 Rupees, or both.

Exception Additional to Clause 463½.— This Provision shall not extend to the Case in which the Terms of the Contract have not been performed by the opposite Party.

Illustration (a).—A contracts to serve Z as a Khidmutgar. Z refuses to pay his Wages after they are due. A runs away. He has committed no Offence.

Illustration (b).—A contracts to serve Z as a private Servant. Z beats A. A runs away. Good Treatment being an implied Term of Contract, and not having been performed by Z, A commits no Offence by running away.

Exception Additional to Clause 463.— This Provision shall not extend to the Case in which the Terms of the Contract have not been performed by the opposite Party.

Exception Additional to Clause 464.—The same as to Clause 463.

Exception to Clause 465, Additional.— The same as to Clause 463.

CHAPTER XXIV.

Of Offences relating to Marriage.

Clause Additional.— Every Man who induces any Woman under Sixteen Years of Age to marry him, without the Consent of her Father, or if her Father be dead without the Consent of her Guardian, or if there be no Guardian, without the Consent of her Mother, shall be punished with Imprisonment for a Term which may extend to Three Years, and shall also be liable to Fine.

Clause Additional, 2.— Every Woman who induces any Man under Sixteen Years of Age to marry her without the Consent of his Father, or if his Father be dead without the Consent of his Guardian, or if there be no Guardian, without the Consent of his Mother, shall be punished with simple Imprisonment for a Term which may extend to Three Years, and shall also be liable to Fine.

CHAPTER XXVII.

Offences against the Law of Nations.

Clause 1.—Whoever prosecutes in a Court of Civil Law or causes and solicits the Issue from any such Court of a Process against any King or independent Ruler of any Country in Amity with the British Government, and whoever executes any such Process, and distrains the Goods of any such King or Ruler, commits an Offence against the Law of Nations.

Clause 2.—Whoever prosecutes in a Court of Civil Law or causes and solicits the Issue from any such Court of a Process against the Ambassador of any King or independent Ruler of any Country, whether at Enmity or in Amity with the British Government, and whoever executes any such Process, and distrains the Goods of any such Ambassador, commits an Offence against the Law of Nations.

Clause 3.—Whoever prosecutes in a Court of Civil Law or causes and solicits the Issue from any such Court of a Process against the Servants and Retainers of any King or Ruler, or of the Ambassador of any King or Ruler, whose Names may have been duly registered in the Office of the Political Secretary to Government, and whoever executes any such Process, and distrains the Goods of any such Servants and Retainers of any King or Ruler, or of the Ambassador of any King or Ruler, commits an Offence against the Law of Nations.

Clause 4.—Whoever commits the Offence described in Clause 1. shall be liable to Fine which may extend to 2,000 Rupees, and also to Imprisonment which may extend to Six Months.

Clause 5.—Whoever commits the Offence described in Clause 2. shall be liable to Fine which may extend to 1,000 Rupees.

Clause 6.—Whoever commits the Offence defined in Clause 3. shall be liable to Fine which may extend to 100 Rupees.

I have, &c.
(Signed) C. W. FAGAN,
Acting Magistrate.

W. P. MASSON Esq. to H. B. HARRINGTON Esq.

(No. 342.)

Sir,

Zillah Banda, 20th December 1838.

As required by your Circular Letter, No. 383 of Date the 24th March last, I have the Honour to forward my Remarks on the Points which, on a Perusal of the proposed Penal Code, seemed to me to require Amendment. First, the Punishment allowed by the Code for the Offence treated of in Clause 332, Chapter XVIII., the wrongful restraining a Person, as exemplified in Illustration (C), appears to me inadequate; it ought, in my Opinion, to be in the Power of the Magistrate to award a longer Imprisonment than One Month, with Eight Days more in the event of the Fine not being paid. Again, in Chapter XIX., which treats of Offences against Property, the Duration of the Term of Imprisonment, the only Punishment excepting Fine allowed by the Code in Offences of this Nature, is, in my Opinion, too limited in almost every Case, excepting that of Dacoity. Not that it is probable it would be often requisite to award a more severe Punishment than that allowed by the Code; still Instances may occur in which, from the notoriously bad Character of the Offender, or other Circumstances, it might be for the Interest of Society that a more severe Punishment may be awarded than, if the Code becomes Law, it will be possible to award. This Remark I would apply particularly to the Punishment for the criminal Misappropriation of Property not in possession, knowing that such Property was in possession of a deceased Person at the Time of his Decese, as stated in Clause 385, and exemplified in the Illustration; and to that for criminal Breach of Trust, stated at length in Clause 386, and the Offence exemplified in Illustration (A). In both these Cases the Temptation to commit the Crime is great, and the Chances of Discovery slight, which of themselves form a sufficient Cause for awarding, or at least empowering the Judge to award, a Punishment more severe than the Offence, simply considered, would seem to call for, but which might serve to counterpoise in the Mind of the Person disposed to the Offence the Inducement held forth by the Facility of committing it, and the slight Risk of Discovery attending the Commission of it. I do not take into consideration the greater moral Guilt of the Person who commits either of these Crimes, when compared with that of him who steals from or robs a Person to whom he is in no ways bound; but it ought to be considered that the Sufferers by either of these Crimes would generally be the weak, the defenceless, and the friendless, whom and their Interest it is especially the Province of the Laws to protect, and whose Oppressors or Plunderers those intrusted with the Execution of the Laws ought to be empowered to punish with exemplary Severity. As required by the Court, I have noticed the Points in the Code which appear to me to require Amendment; although, had I not been so required, I should have felt Diffidence in doing so.

I have, &c.
(Signed) W. P. MASSON, Officiating Magistrate.

E. W. C. MONCKTON Esq. to H. B. HARRINGTON Esq.

Sir,

WHILE submitting my Remarks on the Penal Code, I think it right to state my Reasons for sending in my Observations, apparently uncalled for. The Matter stands thus: I received a Copy of the Code while Officiating Magistrate of Futtelipoor, and it was not till

till I had taken some Pains in studying it, that I availed myself of Leave of Absence on Medical Certificate; and being unwilling that the Labour I then took should be lost, I avail myself of the present Opportunity to submit a few brief Comments, although the Fact of my being no longer officiating as Magistrate would, from the Circumstance that those Functionaries alone were called upon to give their Opinions, render my doing so apparently intrusive.

I have, &c.
(Signed) E. W. C. MONCKTON.

GENERAL OBSERVATIONS ON THE PENAL CODE.

1st. I have great Hesitation in preferring the following Remarks, since it appears to me that the Law Commissioners have, in legislating for India, overlooked some most important Circumstances, which may, in reality, have occupied their most minute Attention, and thus cause the Substance of what I should say to fall to the Ground.

2d. The People of India, without doubt, possess Peculiarities to be found in no other Kingdom in the World. Unlike Europeans, they consist of Races differing from one another even in the various Provinces of India itself, as much as is conceivably possible. Whether the vast Extent of Country, or any other Reasons, may be assigned for the Dissimilarity, is not the Object of the present Inquiry. Suffice it to know, that as much Distinction exists between the varied Population as between an European and a New Zealander. To make One Code to suit Millions of People differing in Religion, Language, Customs and Manners, and Education, efficiently and completely, I am willing to allow is a Work of serious Difficulty; but as such is the Determination of the Government, it is now only a Matter for Consideration how these Difficulties can be overcome, and the proper Remedies skilfully applied.

3d. But notwithstanding the intrinsic Peculiarities and Differences of the Natives of India, there are some Points in which their Characteristics appear to coincide. Of these the most remarkable are their excessive Fondness for Litigation, shown by their numerous petty Quarrels and Disputes, and their Endeavours, in consequence, to ruin one another through the Medium of the various Courts. The Criminal Courts, of all others, are the principal Scene of Action. The Reason for this will require further Consideration. Add to their litigious Propensities their well-known Character for Deceit and Lying of every Species, and without going further sufficient Matter will be found on which alone an experienced Judicial Officer will be able to judge what the general Working of the Code is likely to be.

4th. There is, however, One Class of Natives whom, I think, ought most particularly to be considered in forming a Code of Criminal Laws: it consists of that Class without which hardly any Case can be conducted in a Court of Justice. I allude to the Native Pleaders and Mookteers generally. These are, in Nine Cases out of Ten, the Fomenters of Quarrels and the Perverters of the Ends of Justice. It is this Class alone that know anything of the Laws; they are looked upon by the Natives as their only Resource to escape Punishment or to carry on a Course of Litigation to gratify Malice and Revenge, which their Ignorance of the Law and general Want of Ability prevent their being able to do themselves. It is this Class of People who get up false Pleadings, false Witnesses, forged Documents, &c. &c.; but so artfully do they manage, that should Detection arise their Employers are punished, while they escape; whereas it is they only in almost every Case that deserve to be punished. It is this Body of Mookteers and Pleaders that induce their Employers to appeal from just Decisions, and thus ruin them by holding out false Hopes of Success never to be realized, while they themselves eat the Fat of the Land. They are, in short, in exterior, polished and fascinating, but their Works are the Paths to Misery and Ruin; and in Legislation their Power and Influence with the Native Population ought most particularly to be considered. Indeed, the greatest Benefit that could be conferred on India would be, to have a Code so written that these Pleaders could take the least possible Advantage of the Wording of it, and be unable to aggravate or lessen down a Crime, as suited their diabolical Ends.

5th. I am unwilling, as regards this particular Subject, to say more concerning the litigious Propensities of the Natives, their Deceit, and the vile Qualities of their Pleaders; and I have only here mentioned them to endeavour to show how exceedingly easy it would be for a Class of People so disposed to avail themselves of many Parts of the Code for the Purpose of gratifying petty Revenge. How easy for them, for instance, to put on the Words "done in good Faith" their own Construction! How easy to get up a Case of Intimidation, or "Show of a Fault!" (See Clause 341.) How easy to implicate another in a Case of "wrongful Restraint," &c., &c.! I might here quote nearly Half the Code, but as this would not be consistent with my present Object, I shall in my Remarks on each Chapter point out what Clauses are apparently, for this or other Reasons, objectionable.

6th. Every Code that is intended to be practically useful ought to be made as much practically applicable to Circumstances as possible. Thus, instead of allowing a Magistrate to waste Half a Day in considering under which Head of the Code a Crime lies and in calculating the Punishment, as many of these doubtful Cases as possible ought to be collected together, in the Shape of Illustrations, as Guides. There can be no Doubt that an Illustration is practically the Law, whatever the Law itself may say; and whatever

doubtful Decision is upheld by the Nizamut Adawlut will instantly become practical Law till the Legislature order it otherwise ; and for this Reason I am apprehensive that the Illustrations, however copious, that already form a Part of the Code, are by no means numerous enough. There is One Way, and that only, by which this can be remedied. It is by supplying a greater Number of Illustrations ; and the best practical Method of accomplishing this would be, for the Nizamut Adawlut to be called upon to furnish a Number of Cases that have actually taken place, substituting the Letters A and B for the Names of the various People. The Law Commissioners would distribute these Cases under their proper Heads. There would be this especial Advantage attending this Course ; namely, that the Cases having already occurred, there is a great Reason to suppose that they may occur again ; whereas, the Cases laid down in the Code being fictitious, many may never have occurred in India at all, and may be such, from their very improbable Nature, as never will occur. While on this Subject, I would beg to suggest that, as in translating, the Letters A and B would not be very intelligible to the Natives, the Words Ryott, Zemindar, &c., &c., familiar not only to the Natives but also to the particular Kind of Case likely to occur, and given in the Code as an Illustration, should be substituted for them. An Enlargement of the Illustrations would render endless References to the Superior Courts needless. Should the Illustrations, however, thus become too bulky, a separate Volume could easily be made, thus reducing the original Code to the Size of a Pamphlet, and keeping the Illustrations as a mere Book of Reference on doubtful Points. There is One further Consideration I would beg with Diffidence, as opposed to the Sentiments of the Law Commissioners, to urge : it is the Question of the Propriety of giving the Natives a Translation of the Illustrations of the Code. By all means let them have their Law—give them a Translation of the Code—but nothing else. The Illustrations, I am convinced, will only be a mighty Tool in the Hands of the Pleaders to pervert Justice ; and it is this Class alone who will know what is Law and what is not. It is surely sufficient for the Ends of Justice that the Judges should be made acquainted with the intricate Meanings of the Text and the Apportionment of Punishment, while the People will know that if they commit such and such Crimes they will be punished. It is of little Matter to them, when found Guilty, which Head of the Code they are to be punished under, or whether Half the Punishment is to be according to One Chapter and Half according to another. Though this Piece of Information is of infinite Importance to the Judge in awarding Judgment, I do not mean to say that it might not be *more satisfactory* to the Criminal, supposing him to be Lawyer enough to know anything about it. I merely suggest that while it might be rendered the Means of perverting, it is extremely doubtful whether it would ever be found useful in aiding the Ends of Justice.

7th. In commenting on the Code now before me, a serious Difficulty occurs in the Want of the new Code of Procedure ; for what may now seem clear and feasible, might, if it were necessary to carry it into Execution in any particular Way, appear to be confused, perplexing, and impossible. It is, therefore, not at all unlikely that many Parts may now be passed over by me and others without a Remark, that would, on Inspection of the Code of Procedure, require Comment.

8th. In several Clauses (see Clause 106) it is stated that the Imprisonment shall extend to a Twelfth, &c., Part of the longest Term of Imprisonment provided for the Offence, whatever that Term may be. Now it is a clear Waste of Time to a Magistrate or Judge to search out for this. That it is easy to be done, I admit ; but to do this at once by stating the Period of Imprisonment, appears the better Course ; for what does it signify to the Magistrate to know that the Law Commissioners think that the Twelfth Part of a particular Term is to be awarded in such a Case ? All that concerns him is to award the Term put down, let Reasons for fixing such Term in the Code be what they may.

9th. Whether it be the Intention of the Law Commissioners to furnish an Index I know not ; but I conceive that such is indispensably necessary. It might be practicable to make the Code itself a sort of Index, arranged with the Crime first instead of the Word “ whoever.” Thus “ Voluntary culpable Homicide is the doing any Act, or omitting “ to do what the Law renders binding, with the Knowledge,” &c. (See Clause 294.) This Arrangement, though not made alphabetically, would still aid the Eye materially in searching for any particular Crime, and I think would help to abbreviate many Passages.

10th. Connected with the above, there is one more Point of some Importance to be understood. I beg to refer to Chapter Eighteen, Pages 84 and 89, where it will be observed that the Reader is referred twice to Clause 297 for an Explanation of the Definition of “ grave Provocation.” I beg to suggest that every *technical Phrase* whatsoever, or Phrase that in any Way requires Explanation, be marked either by being printed in Italics or by inverted Commas, and that in the Margin opposite to it the Number of the explanatory Clause be marked ; by this Arrangement a Doubt can be cleared in an Instant by immediate Reference. I would also suggest that all Explanations of peculiar Phrases, although comprehended in the Body of the Work, be also placed in the Chapter of “ General Explanations,” and an alphabetical Arrangement would here perhaps be the most practically useful.

11th. As there are many Crimes that arise out of Principles of Honour, and others again where a high Sense of Honour prevents Parties taking Advantage of the Law, but, on the contrary, induces them to take it into their own Hands, the Legislature should make this

this Subject most peculiarly their Study, and endeavour so to form Laws that Honour would not feel outraged by seeking Redress from them. I beg, therefore, to propose that, distinct from the present Headings, there be another especially made for Offences where Honour, truly or even falsely so called, be legislated for. My Reasons for urging this, and the Principles on which I think it may, in some Cases, be successful, will be given in my Remarks on the Chapters where Honour appears involved (see my Remarks on Chapter XXIV., Note 2.)

12th. One of the greatest Difficulties that Judicial Officers in India are involved, is the Determination of what Kind of Evidence, and what Quantity of it, shall be sufficient to punish on. Now where circumstantial Evidence was good, and there was only *One* Witness, common Sense would often suggest to an Officer that the Party ought to be punished, though the Want of a second legal Witness would perhaps as frequently induce him to release. I would suggest that under the Head of Perjury, for instance, numerous Illustrations be given, showing what, in the Opinion of the Law Commissioners, is *sufficient Proof* to convict upon, otherwise Conviction under the present System will be, in many, I may say most Cases, next to impossible, and thus the whole Chapter that treats on false Evidence and the Efforts of the Law Commissioners will be fruitless. By the Mahomedan Law, Confession, I believe, is the only Evidence allowed on which to convict a Man of Perjury. I cannot, however, see, let the Law be of what Country it may, why a Number of Probabilities, sufficient to satisfy a Judge's Mind as to the Guilt or otherwise of a Party in one Case, should not be sufficient in another, and why Perjury, the most detestable of all Crimes, should above all others be sheltered by the Difficulties thrown in the Way of Conviction by the Law, and that the very Law that ought to be employed in bringing it to Light and punishing it. It is thus many Cases are at present left in Obscurity, merely from One Officer's not accepting as legal Proof what is manifestly clear to another to be such; and this Difficulty would in a great Measure be overcome by copious Illustrations, showing the smallest possible Amount of Proof of various Kinds on which the Law Commissioners would convict, instead of leaving Things as they are, not to the Decision of a Jury, but the *Ipse dixit* of each Judicial Officer through whose Hands the Case may happen to pass.

CHAPTER II.

Clause 43.—The meaning of the Words "*not both* of Asiatic Birth and of Asiatic Blood" is doubtful; may the Person be of Asiatic Blood and not of Birth, or vice versa, or must he be neither of Asiatic Blood or Birth? This last appears to me to be the Sense meant, and if it be so, I think the Wording should be altered.

Clause 44.—The same Remark applies here as in Clause 43.

Clause 52.—"The Term shall not exceed One Fourth of the Term of Imprisonment which is the Maximum, &c." Here the Words "*One Fourth of the Term*" are not explicit; it would be equally short to state the Term at once, instead of putting "*One Fourth*," and thus save the Waste of Time in reference to ascertain what Time the "*One Fourth*" of the Term was. This Remark applies throughout the Code.

CHAPTER III.

Clause 62.—It is hardly necessary to point out how liable Illustration (b) would be to Abuse by the Native Police. The "good Faith" would be a splendid Plea for seizing whom they pleased; and in short, if in Law "good Faith" be made a good Plea, which here it most certainly is, where is the Line to be drawn? This "good Faith" had infinitely better be left to the Judge's Judgment, than, by being put down as Law, be made to serve as a Pretext for false Pleading.

Clause 64.—I think Children from Five to Seven Years of Age are just as clear-headed and quick as those of a much greater Age in England. Could any good Means of punishing Children be devised without the contaminating Influence of a Gaol, I would suggest that the Word Seven be altered to Five.

Clause 65.—The Age of Twelve, I fear, is a precarious Standard; and indeed Age is so uncertain in India, that hardly One Person out of Ten knows his own Age. It had much better be taken for granted that all Children between Seven and Twelve are of mature Understandings, than to allow the contrary Plea to be urged in any Case of Delinquency. I never knew or heard of a Case in which Children of that Age in India were not perfectly conscious of what they were about; and when a Person is a Fool, no Age can be a Standard.

Clause 67.—This Clause will almost invariably be made a Plea by People accused of heavy Charges.

Clause 68.—The same Remark as above applies here with Tenfold more Force. How easy for a Man to prove by his own Servants that he eat something of an intoxicating Nature, not being aware of the Effects, and while drunk committed Murder, &c.?

Clause 70.—How is the "free and intelligent Consent" to be proved, the *Party being dead*? The Offender has only to plead good Faith and gets off; and this Law in the present State of Indian Quackery, I regard as anything but safe, to say nothing of its excessive Liability to Abuse by the Natives in getting rid of their Enemies.

Clause 71.—Illustration (c), even if it be true in Law, had, I think, better have been omitted; for where is the Line to be drawn between a Person entering another's Zenana and a Pindaree; and, indeed, between a Hundred Cases always daily liable to occur among the Natives? This Illustration would be an effectual Plea in such Cases for escaping Punishment. Would an Englishman be justified in stabbing his Wife or Daughter to prevent a supposed Dishonour? I fear not. Why then should a Line be drawn between a Native and an Englishman? Illustration (d) is liable to much Abuse.

Clause 76.—This Clause appears to be Legislation for Intentions and not for Facts; and this appears to be very often the Case throughout the Code. All such Law must, in its Operations, be doubtful in the Extreme, and liable to excessive Abuse. There can be no Doubt that of this Section, Clauses First, Second, and Sixth, will be abused for a Thousand bad Purposes by the Natives.

Clause 77.—The Words "*any Harm*," other than Death, extend, of course, to Maiming; and if so, this Clause may be subjected to much Abuse, and doubtless will be.

Clause 78.—This is liable to extensive Abuse.

Clause 79.—This Clause, under the Head of Mischief by Fire, on Places used as a *human Dwelling*, seemingly excludes Tents, Buildings, Granaries, Store Houses, Store Boats, &c., not used as *human Dwelling*. Why should not a Man have a Right of private Defence, when any of these last are wantonly set fire to? It is true that Provision is made for such in Clause 80; but in general these Places are attached to human Dwellings, and where is the Line to be drawn? It might be as well to give some Illustrations of what Circumstances are to cause Apprehension of grievous Hurt or Death. It is clear that a Woman and a Man would infer differently from the same Things, and that all Men somewhat differ. Where, then, is the Line to be drawn, and how is extensive Abuse to be prohibited?

Clause 80 is liable to all Sorts of Abuse, such as horrid Mutilations, &c. How easy it would be to construe a most trivial Thing, the least suspicious, into an Attempt to commit and then take and mutilate the Party!

Clause 81.—And when does the Danger commence? Is this also to be a Matter of Opinion? Is it to depend on Suspicion that an Attempt is about to be committed before it actually occur? If so, where is the Line to be drawn? How many Acts of Violence might thus be perpetrated under the Shadow of having acted on "*good Faith believing*!" Again, the Right of Defence is to last till the "*Property has been recovered*." Thus it might last for Twenty Years; but I imagine this is far from the Intention of the Law Commissioners. I think, to prevent Error, this Sentence should be more explicitly worded.

Clause 83.—This Clause is liable in India to great Abuse.

Clause 84.—This Clause is still more objectionable than the former. It is a direct Permission for a Man, on the Plea of acting on good Faith, to commit every Species of Violence, and requires no further Comment. I can scarcely imagine a Case that a good Native Pleader could not contrive to twist so as to bring the Act in some Measure under some of the mitigating Clauses of this Chapter. It is an ample Field for a Rogue to escape, and a Villain to commit Violence with Impunity; and thus is objectionable as practical Law. No Judicial Officer can now doubt much about what is done in good Faith, and what is not, if Things are only left as they are; but the Matter will be vastly different when the Offender quotes Law to back him, and thus makes good Faith a good Plea; and the Judicial Officer is thus obliged to pay some Respect to what would never have cost him a Moment's Thought before. I cannot see, moreover, that by making such Pleas Law, that the Ends of Justice are at all more attained, or that a single innocent Man would be more likely, under the present System, to be punished.

CHAPTER IV.

Clause 87.—The Illustration to this Clause affords a Precedent liable to Abuse. A in any similar Case has only to say that "*he believed*" in order to get off.

Clause 90.—The Fact of a Bribe being given, rather aggravates than diminishes the Crime, as mentioned in Clause 88; notwithstanding which the Punishment is less by One Fourth what it would be under that Clause.

Clause 94.—The Objection to fixing Ten or any other Number here appears to be, that the first Instigator might only urge on Five or Six People, and the Result be that a Mob of Fanatics might be collected; and surely, in such a Case, whatever might have been the Instigator's Intent, he would be equally deserving of Punishment as if he had instigated Ten; and I therefore think that Provision for such a Case should be made in the Code, if the Number Ten is retained in this Clause. Illustration (b) is of a very improbable Nature, and therefore, as an Illustration, objectionable. All Examples should be such as have occurred, or are liable to occur. These are beyond doubt Precedents, and as such are Law just as much as the Code itself. Illustrations ought, therefore, to be very numerous, and made to embrace every possible Case; and when the Decision of a Case may depend on doubtful Evidence, they should be so written as to show exactly what Degree of Evidence is, in the Opinion of the Law Commissioners, sufficient to convict upon; otherwise the Clause will often include many doubtful Cases not in the Illustrations, and thus lead to

to endless Appeals and Differences of Opinion: One Officer thinking that it comes within a peculiar Clause and his Superior differing from him. Numerous Examples, though even not embracing every possible Case, would still be such Guides as would at once clear up many doubtful Points.

Clause 96.—A Person, if any Act or any illegal Omission takes place in pursuance of a Conspiracy, is hereby punishable; but there does not appear to be any Clause to punish a Conspirator, the Conspiracy being proved, *supposing the Act has not taken place*. Now, in many Cases, it may so happen that the Act would have taken place had not some Circumstances occurred to prevent it. Still the Guilt of the Parties is just the same, the Intent being the same. Suppose, for example, that A, in the Illustration, tried to buy Poison, but none was procurable; would he therefore be justified and free from Punishment?

Clause 98.—In this Clause the Words, "If the Abettor knew to be likely," occur. Now it appears very clear that all Abettors would immediately say that they *did not know*; and therefore the Discretion of judging whether the Abettor was likely to know or not should be left to the Judgment of the Judicial Officer, and not to the *Ipsa dixit* of the Offender, which the present Wording of the Clause seems to imply.

Clause 100.—Illustration (d). This Precedent is liable to much Abuse. B is here allowed to do a Wrong under a Misconception. It is needless to say how Circumstances might prompt a Villain to conceive and believe what he wished, and then, having Law to back him, how is he to be punished?

Clause 102.—Here, if the Offence concealed *be committed*, the Concealer is to be punished. There does not seem, however, any Provision for punishing if the Offence is not committed, though the Design be proved. If the Offence be such as not to be punishable with rigorous Imprisonment for a Term of One Year and upwards, the Concealment of a Design to commit it appears not to be punishable at all. Clause 86 explains the Meaning of Abetment; but no subsequent Clause appears to punish, provided that some Offence has not actually been committed, owing to the Abetment, except Clause 94; but this only for instigating the Public generally. Some further Provision appears necessary.

Clause 107.—The direct ascending and descending Line requires to be detailed more fully. What an Englishman may conceive to be not in the direct Line a Hindoo or Mahomedan may. This Exception gives far too great Licence. In short, all Relations of Thieves in the direct Line may harbour them and their Property with Impunity. Surely, though some few Cases may fall within the Exception, all do not. These Exceptions would form fit Subjects for the Magistrate's Consideration. A Man, for example, who was in the habit of harbouring Thieves, ought not to get off free of Punishment if it was proved that he had been in the habit of frequently concealing his Son under similar Circumstances.

Clause 108.—By this Clause, whoever abets by assisting to retain stolen Property, &c., is to be punished. Here no Exception is made in favour of the ascending or descending Lines. Now it is evident that one Relation endeavouring to screen another from Justice, and knowing the Crime he has committed, cannot be ignorant what the Nature of the Property in his Possession is; and therefore, by screening the Offender, he indirectly assists him to retain the Property, and ought, therefore, though a Relation, under this Clause, to be punished.

CHAPTER VII.

Clause 135.—It here appears evident that an Assembly having been commanded to disperse, must, ere such a Command has been issued, be a riotous Assembly; and, moreover, that Twelve Persons are sufficient to constitute such a riotous Assembly. But the Inconsistency appears to be, that a Person under this Clause, committing the Offence of Rioting, is to be punished with Imprisonment for One Month only, whereas, under Clause 30, for the same Offence, he is to be punished for Two Years.

Clause 136.—One Year's Imprisonment appears here to be much too trifling, considering the serious Consequences likely to result from the Crime defined.

CHAPTER VIII.

Clause 142.—(See after, Clause 149.)

Clause 149.—I cannot see why, under Clause 143, a Judge disobeying a Direction of the Law of Procedure is to be punished with One Year's Imprisonment and unlimited Fine, while under this Clause his Subordinate, for much the same Offence, viz. knowingly disobeying his Superior's lawful Orders (*i.e.* in accordance to the Law of Procedure), with the direct Intent of favouring a Party, is only to be fined Three Months Salary. There is, however, this striking Difference, that I have never known an Instance of a Crime such as is defined occurring under Clause 143, whereas Cases defined in Clause 149 daily occur. It would seem more suitable, therefore, in order to put a stop to Crime, to substitute the Punishment in Clause 143 for that in Clause 149, leaving it to the Judicial Officer's Discretion to apportion the Punishment; the Party being still at liberty to appeal.

The same Remark applies to Clause 179.

Clause 142.—That a Judge should be able knowingly to pronounce unjust Decisions is clearly not proper, but by Clause 12 Collectors and Magistrates, &c. are Judges, and as such pass innumerable Orders daily in their respective Courts, surrounded by every Species of Villain, from the highest to the lowest Grade, all trying to gain their own Ends by the vilest Chicanery. All this occurs, not with an Officer who, as a Judge in England, can try each Case fully at his own Time and weigh it afterwards, or put it off for Consideration at leisure, and has the Advantage of hearing every thing spoken in his Mother Tongue, and commented on by the Lawyers, (who, however skilful at their Business, should hardly be put on a Par with the Indian Vakceels, because I cannot conceive they would stoop to such low Acts,) but before a Civilian, who is perplexed, not only with being over-worked, but also with a Foreign Tongue, with a Multitude of Cases differing vastly in their Nature one from another, with the combined Work of a Collector (including an exceedingly difficult Revenue System) and that of a Magistrate, the latter being of infinitely greater Responsibility than that of any English Magistrate, and with lastly, though by no means the least of his Annoyances, a crowded Court oppressive to Excess, and this in a Climate that is relaxing to a Degree. Now can it be wondered at that the very best intentioned Officer should occasionally pass Orders that are exceedingly erroneous, such that on Leisure he would never have passed? and yet under Clause 142 he may be imprisoned for Two Years, fined without Limit, or subjected to both Imprisonment and Fine. His Intentions may be the best, but that a Case of deliberate Villany may occur causing such an Officer to be punished is by no means improbable. In India every Man who loses his Suit is the Judge's Enemy, and these will combine to destroy an Officer (however good a Servant he may be of the Government) who is opposed to their Interest; the better the Officer is the more inveterate will these People be to punish and get him removed, simply because they are unable to carry on their nefarious Designs. Surely the Government have already sufficient Power without adding to it under this Clause.

Note E.—The Object of this Chapter appears to be, to legislate for public Servants in a Body, be they whom they may, without Distinction between those who are covenanted and those who are not. This appears, for several Reasons, to be injudicious. The most palpable are, that Two Years Imprisonment to a covenanted Civilian would be an infinitely greater Punishment than a similar Term to a Native Judge. To turn a Civilian out of the Service, or put him out of Employ even, would be infinitely greater Punishment than to imprison a Native Judge. Indeed Natives in most Instances come out of Gaol with unblemished Characters to the Bosom of their Friends and Relations. Their having been imprisoned is oftener looked on as a Caprice of Fortune than as resulting from any Faults of theirs. Not so to the Civilian; he is immediately an Outcast from Society, and Trade or even ordinary Means of earning a Livelihood are shut out to him. If there were no other Reason to offer I think this alone is conclusive for not placing all Classes of Judges on a Par; but there is another Reason of some Weight for making an Exception in favour of European Officers, and as the Law Commissioners have themselves made use of it I have the less Hesitation in mentioning it here; it is, that every Offence committed by an European that is punished in India weakens the Authority of the British Civil Power. There can be no Doubt of this if there be any Truth in the Position that the Imprisonment of an European Judge in the Face of the Natives for Two Years would, to say nothing of Injustice, greatly lessen their Feelings of Respect for Europeans in general, and the more such Crimes are visibly legislated for the greater will be the Number of Complaints instituted. I trust that Civilians who employ their Power to gratify their Cupidity or Revenge are nowhere in Existence except in the prospective legislative Views of the Law Commissioners, and that there is no Necessity under existing Circumstances for making Provisions, the Policy of which is very questionable for such Cases. There is One Position laid down in Page 33 that appears to savour strongly of Injustice. It is asserted that the Government may be justified in inflicting Punishment on a Person because they *strongly suspect him* of Guilt which they cannot bring home to him by Evidence to which a Zillah Judge would *pay any Attention*. This hardly requires a Comment. There is a vast Difference between Evidence that a Judge might not convict upon and between that to which he would pay no Attention; and if the Evidence was clearly such as not to merit his Notice, and to which he would pay not the least Attention, I cannot conceive any Government being justified in acting upon it. There are many Cases in which, through some slight Flaw in Law, a Judge might feel himself obliged to acquit, when the Supreme Government need not, from their legislative Powers, pay so strong Regard to the exact Wording, if the Substance of the Law was obtained by reasonable Evidence; but if this Substance is not obtained by reasonable Proof, such that would have some Degree of Weight with a sensible Judge, it surely cannot be in either Reason or Justice that a Government are to be allowed to have the arbitrary Power of punishing their Servants on mere Suspicions, groundless till proved. Why not leave the enormous Power (spoken of in the Middle Sections of Page 33) of the Government regarding covenanted Servants as it stands without adding to it?

In Pages 36 and 37 it is stated that the Bribee is to be punished, and not the Briber; this, as a Piece of Legislation, appears utterly unintelligible. The Argument used is, that Men give Bribes to Magistrates with the same Feeling that induces them to give their Purses to Robbers, in short that they bribe because Justice is unattainable without it.

Now

Now it is evident that not punishing the Briber is giving him a direct Permission to be, which means a direct Permission to use the worst Means for corrupting a good one and for rendering a corrupt one worse. That there may be some Reason in punishing a corrupt Judge doubly as much as the Person who endeavours to corrupt him I admit, but that the Man who offers a Bribe should, because the Judge happens to be corrupt enough to receive it, escape, appears manifestly unreasonable and tending to produce the worst Effect, viz., the Destruction of Certainty and Security in procuring Justice; because the Crime is common either Way by so much more forcible is the Reason for punishing very severely. Now suppose that we put the Case exactly reversing it, and that the Bribers and not the Bribes are to be punished; why the Result would be, that no one would offer a Bribe, consequently no Judge could be corrupt, for he could not receive one, and thus the Ends of Justice would by this System be gained doubly quick; and surely the End of all good Legislation is to eradicate Evil of whatever kind with the greatest Speed and to prevent its Recurrence. But let us take the Case as it really is. As a general Rule, all Natives are more or less corrupt. This is proved, if by nothing else, at least by the Argument used by the Law Commissioners; for they show the Magistrates to be so infinitely corrupt as not to legislate on that account for the Bribers. Now these Magistrates are the Pick of the People, who then can be void of Corruption? There is, therefore, a Battle between Two corrupt People always going on. Could it be correctly ascertained the Number of *false Complaints* instituted by these unfortunate People who are hereby to escape Punishment as compared with the *true Ones*, nay, could it be correctly ascertained in these true Complaints how much Falsehood has been inserted, I think I shall be fairly within the Mark if I say that the smaller Half would be in favour of the Truth. Add to these the Thousands of frivolous Complaints urged by them merely for Purposes of Annoyance and Intimidation, and the Impropriety of allowing such People, who in addition to their Rascality add that of giving a Bribe to serve the worst Ends, to escape unpunished, I trust, will be manifest.

CHAPTER IX.

Clause 152.—Is the Punishment mentioned in this Clause to be in addition to the Punishment awarded for the Crime on which the Party was summoned?

Clause 153.—Ditto.

Clause 154.—Ditto.

Clause 155.—The Punishment herein mentioned is inadequate for many Cases likely to occur under this Clause.

Clause 156.—Ditto.

Clause 162.—As many Illustrations as possible are here required of all Sorts of Cases of Perjury in order to show what is considered such Perjury by the Law Commissioners as to be cognizable by the Courts, and, moreover, what legal Proof would be sufficient in each Case to convict upon. There are so many Cases daily occurring that there is not a Case hardly in which a Man does not more or less perjure himself, *ic.*, almost every body ought to be punished if anything like reasonable Proof were deemed sufficient, but unfortunately such is not the Case. It would afford a ridiculous Commentary on the Law of Perjury if every Magistrate were to state what in his Opinion was legal Proof and then contrast it with what, under the actual Law, is construed as sufficient Proof; in short, no one scarcely who does not confess it is deemed guilty of Perjury. But in addition to this are there to be Grades in Perjury? Common Sense, and indeed the Term of Imprisonment extending from Six Months to Three Years under this Clause, show that there are, and that according to the Atrocity of the Intent so should be the Punishment. Thus a false Complaint embraces Two distinct Facts, Perjury to commence with, as the false Deposition is taken on Oath, and Malice prepense of the vilest Description, a diabolical Attempt to ruin another through the Medium of perverted Justice. A Case of this Kind would appear liable to the severest Punishment that could be assigned for Perjury, and yet strange to say that a Distinction is made under the Regulations between Perjury and a false Complaint, the former being visited most severely, the latter with only Six Months. A Complaint having been established to be false, by what Logic it cannot be shown that the Complainant has not perjured himself I cannot conceive; and if it is Justice at all to put him in Gaol for a Day, it is equal Justice to give him the full Punishment of Perjury. If, on the other hand, *there be a Doubt* regarding whether the Complaint be false or not, surely the Benefit of the Doubt should be extended to the Party, and he be allowed to escape without Punishment, and not have a Half-and-half Sort of Punishment of Six Months to meet the anomalous Sort of Perjury called a false Complaint. I merely mention this here to show that unless some Illustrations are given, showing what is the Intent of the Law Commissioners, old Prejudices will go much against putting the full Meaning of the Law in practice. The various Magistrates should, from the Examples given, be able to see at once where to draw the Line between what is punishable Perjury and what, being a mere *Lapsus linguae*, should be passed over, as well as what Proof they are to consider sufficient to commit or to punish on.

Clause 168.—Some Illustrations should be given exactly defining the Meaning of the Word to "*obstruct*." A Dozen People will place a Dozen different Constructions on this

Word, and frequently many Cases will thus, owing to Differences of Opinion, escape without the Parties being punished. The Term of One Month appears too inadequate for many Cases likely to occur.

Clause 171.—Is the Punishment herein stated to be in addition to the Punishment the Party is to have for the Crime for which he is ordered to be seized?

Clause 175.—The Punishment of Three Months appears insufficient for many Cases; a Man imprisoned for Seven Years would think Three Months nothing in addition to the Seven Years, while the Gain by escaping is manifest.

Clause 177.—Cases under this Clause occur so frequently, and Justice is so deterred in consequence, that the Punishment allotted appears inadequate for all Cases. With regard to the Exception it is by no means clear who are Relations and who not. In India all People of a Caste are more or less Relations, and to arrive at exact Truth is very difficult, and for a Man to escape Punishment by Two false Witnesses calling him a Brother appears a manifest Perversion of Justice. That such Means will be taken as always to enable People to escape Punishment is clear. The Exception, however well meant, is very bad in Practice. A Magistrate who has a Grain of Sense will, of his own Judgment, distinguish Cases that should be punished and those that should be let off; whereas under the Shelter of this Law the greatest Scoundrel will harbour the greatest Rogues. Only conceive the Waste of Time in inquiring into a Case of Lineage. In the District of Buckergunge there are Three Sorts of Witnesses. The First Sort are clever Rogues who are up to every Turn in the Law, understand how to equivocate and evade Questions and turn their Evidence to account as the Circumstances of the Case require; these live by giving false Evidence; it is their Trade, and accordingly each of the Zemindars has Half a Dozen, more or less, of these Witnesses in his Pay, ready for all Occasions, either to prove a Case in his Favour or to answer for him in Defence when he gets into any Difficulties; nothing that goes on is unknown to them; indeed it is their Place to be acquainted with every thing so as to turn it to account. The Second Class are borrowed Witnesses; these come into Use in the following Way: a Man is frequently with all his Witnesses made a Defendant, his own paid Witnesses are thus rendered of no avail, he immediately writes to his Friends to supply him, which, as a Matter of "*good Faith*," is immediately done. The Third Class are those People who hang about all Courts, and who can be brought to say anything for the merest Trifle. And I may add a Fourth, namely, those who through Fear of Oppression are induced to give false Evidence. That these People exist in almost every Grade and Shade throughout India cannot be doubted. How easy then to find a Brother or a Father in Affliction!

Clause 179.—See Remark on Clause 149.

CHAPTER X.

Clause 188.—Illustration (b). In this Illustration it ought to be shown what is to be considered a false Statement material to the Question, and what is to be held sufficient Proof of such. If copious Examples are not given, Matters will remain in statu quo, and nothing be done in the way of punishing false Statements, &c.

Clause 195.—Is the Declaration herein mentioned to be held to be tantamount to an Oath? If so, why is the Offender not to have the full Punishment of Perjury?

Clause 196.—A Man instituting a fraudulent Civil Suit and stating on Oath that to be true which in reality is fraudulent, *i.e.* false, appears to have committed Perjury of the First Magnitude. Why he is not to have the full Punishment of Perjury, but only a Year, appears utterly inexplicable.

CHAPTER XII.

Clause 240.—I cannot see why a Person who knowingly receives and palms bad Coin on another would be better than he who imports it into the Country or coins it out of the Country, or why such a Man should have a less Punishment than the other. The Object here may be good in the Legislator, but it is clear that the Forger will take as much Advantage of the Leniency of the Law as he who having been imposed on tries to impose on others. The Magistrate or Judge would be blind if in awarding Punishment some Distinction were not made by them in Cases differing in Atrocity; and it is far better that they should even occasionally err than that any Clause should be rendered the Means of sheltering a Villain.

Clause 242.—The Punishment is here also too trifling.

Clause 243.—The Words "*having known at the Time*" occur here. Now how is it to be proved that the Party knew at the Time if he chooses to deny Knowledge; moreover, how is it to be proved that he *intended* to pass Coin as genuine till it was so passed? This is Legislation for Intentions. A few Illustrations here would be of great Use showing the Style and Manner of Proof. In Clause 242 the Crime either having been committed or an Attempt made to commit it, a Fine is to be imposed amounting to Ten Times the Value. There without any visible Crime having been committed, except that of Possession, which must also of Necessity occur in Clause 242, the Party is to be imprisoned up to a Term of Three Years unlimited Fine.

Clause

Clause 246.—The Crime mentioned in this Clause is of so common Occurrence and so difficult of Detection that the Punishment laid down appears inadequate to put a stop to it.

Clauses 249 and 250.—I do not understand why Coin coined by a Foreign Power, if current in the Company's Territory, is not Coin equally with that bearing the King's or Company's Stamp, and why a mere Difference in a Stamp is to make a Difference in a Man's being imprisoned for Forgery. Coin is Coin, and is a legal Tender, if current under Law in the Country, be the Stamp on it what it may. It surely cannot be urged that a Man scooping out a Furruckabad Rupee (which Coin is equal in Value and equally a legal Tender with the Company's Rupee, and moreover equal in Value) and filling it with Lead and passing it as good Silver has been in Intent and Criminality at all less guilty than if the same Operation had been performed on a Company's Rupee. But the Coiner would find to his Astonishment a wonderful Difference, to his Cost, in being imprisoned for Three instead of One Year, a Difference that he could scarcely be supposed to have calculated on or contemplated. The Crime having been committed, the Intent to defraud the Public is manifest; and it appears that this Intent is the same, be the Coin little or large, Company's or Native; why then make a Distinction in the Punishment when there is no Distinction in the Intent? Mankind are not the less injured because the King's Stamp is on the Coin, nor are they on that account injured the more. However much it may be wished that the Company's Coin may supersede numerous Native Coinages it never will do so without severe penal Enactments prohibiting their Use in these Territories; for so long as the People find their Profit in trafficking in Coin, so long will they remain, *i.e.* for ever. In Page 48 of Note I. it is stated that no Provision has been made for a Person having a Number of counterfeit Coins in his Possession who is not able to explain satisfactorily how he came by them. The Reason for this is not very apparent, but it is very clear that the more People of this Description are punished the fewer will be the Crimes against the Coinage.

CHAPTER XIII.

Clause 254.—In a Country where the Weights and Measures vary in every Village, and in every Town, in every Purgunnah, in every Zillah, and in every Presidency, where the Weight is denominated by the Kutchah and Pukka—*i.e.*, full and short Weight—how is the Provision of Clause 254 to come into play in the very next Village? Could this Crime to all Appearance be committed? Now there is nothing more necessary than a legal Standard of Weight and Measure to be current throughout India. The Cheating that now exists is vexatious in the extreme, and there is unfortunately no Remedy. The Effect of having only One Weight would be that, if it were a large one, the same Quantity of the Article would still be sold, only it would appear less from the increased Weight of the Seer. If, on the other hand, the Weight were smaller than the present one, the Quantity of the Article would appear more, though in reality it was the same. At present no one but a Bunneeah knows the Intricacies and Variations of Weights, and on this depends in a great Measure their Means of plundering the more ignorant Public. Indeed, to acquire this Knowledge of itself requires nearly a Life. The First Enactment that equalizes Weights throughout India will be a great Blessing. Under this Clause who can say that a Bunneeah has used a Weight or Measure as a different one from what it is?

Clause 255.—Surely the Intention in this Clause is not to be left to the Party's own Assertion. In "good Faith" the Crime, be it remembered, is not here committed. The supposed Offender merely has it in his Possession; how is the Magistrate or Judge to determine the Intent? Is Assertion of either Party that they are acting on good Faith to be upheld, and to what Extent?

CHAPTER XIV.

Clause 257.—If the Crime in this Clause were to be proved, Six Months appear to be strangely inadequate. A Person malignantly and wantonly places Articles infected with the Plague in the Houses of the Law Commissioners; not only do they die of the Plague, but that Disease is spread through Calcutta, to the Destruction of Thousands; what would be thought of the Magistrate or Judge who would punish that Man by Six Months Imprisonment.

Clause 259.—The same Remark holds good here as regards the Amount of Punishment.

Clause 260.—Ditto.

Clause 261.—Ditto. Surely the Injury done to the Human Body by taking adulterated Medicines or Food is as great, often an infinitely greater, Injury than that by beating, &c., but with this great Difference in the Result—that if a Man beats another, in Nine Cases out of Ten he meets with Punishment; whereas, on the other hand, the Difficulty of Proof is here so great that the Criminal, in Nine Cases out of Ten, escapes; and this of itself is surely a sufficient Reason why the Offender, when the Crime is proved, should be severely punished.

Clause 266.—In Clause 265, a bad Driver may run over and kill a Man, but here a Captain may drown a Thousand Men, or more. Surely where the Trust is greater the Responsibility and Punishment should be proportionably so.

Clause 268.—The Punishment here appears to be very inadequate. Nothing can be easier than for a Man, having made a diabolical Attempt to poison another, to escape, under this Clause, with Six Months Imprisonment.

Clause 269.—It should be a great Satisfaction to a Man owning a splendid House in Calcutta or elsewhere, on its being burnt down, to put the Incendiary in Gaol for Six Months. How easy to maliciously burn a House, and to escape with trifling Punishment under this Clause.

Clause 270.—The same Remarks hold good here. A Person is maimed for Life, and he has the Satisfaction of knowing that he can only get the Villain punished with Six Months Imprisonment. How easy for a Man maliciously to injure another, and get off under this Clause.

Clause 273.—This Clause might easily be abused by introducing a poisonous Snake in such a Manner as to bite another; and the malicious Offender escape with comparative Impunity.

CHAPTER XV.

Clause 285.—This Clause appears to be a direct Permission to any Man who can pay 50 Rupees wantonly to destroy the Caste of another. There are many Classes of People, such as Bramins, that, having once lost Caste, can never recover it; i.e., are Outcasts for ever from their Relations and Society. There are others again who, though Caste once lost cannot be recovered, may, by paying a heavy Fine or feasting the Bramins and their own Relations, be received back. Now the Act, if intentional, can hardly be anything but malicious and wanton; the Injury, on the one hand being irreparable, and the Calamity inflicted perhaps often worse than Death to the Sufferer. The Punishment of the least Severity ought in such Cases greatly to exceed the above Fine; whereas, on the other, the least Reparation that Justice could afford would be to make the Offender purchase back the lost Caste at any Price, in addition to the Fine, as a Punishment. There is this peculiar Difference between the Crime specified in Clauses 275 and 276 and that in the present one; viz., that the one is a deliberate Act to destroy that which another holds most dear, viz., his Religion; whereas the other, though the Result may be a Breach of the Peace and a Tumult, still no one's Religion is destroyed, however insulted; and, in all Probability, the Offender will suffer summary Vengeance on the Spot, which will not often be the Case in the Matter of destroying Caste.

CHAPTER XVI.

Clause 288.—It were better to state in this Chapter distinctly what Persons are legally authorized to enter the East India Company's Territories by Land, and whether such People are to make known their Names, Places of Destination, &c. to the public Officer nearest to the Place where they may enter these Territories by Land.

CHAPTER XVII.

Clause 293.—Here no Provision is made for publishing private News, thus giving a direct Permission to Publishers to comment as they please on the private Concerns of their Neighbours.

CHAPTER XVIII.

Clause 294.—Illustration (b.) Should A's malicious Design be here detected, just before Z's Execution, surely such false Deposition deserves a greater Punishment than what would be assigned to him for Perjury; and yet there appears no other Clause under which so diabolical a Design can be punished. That Z is not executed is no Fault of A's, for he is just as guilty as if the Execution took place; and is, therefore, worthy the same Punishment.

Clause 297.—*Explanation.* Here the Words of *Right of "private Defence"* ought either to be marked with inverted Commas, or be written in Italics, with the Numbers of the Clauses, defining what constitutes such Right.

Clause 298.—The more reasonable Course appears to be that all Cases of Homicide that are *culpable* in the Persuader should be Murder at once. I cannot see why a Bramin persuading a Girl of Thirteen Years to immolate herself for the sake of the Money and Presents given on such Occasions should escape unhung, or indeed in any Case where the Act of Persuasion was legally culpable. If the Party be not legally culpable, he ought not to be punished at all.

Clause 299.—The wording of this Clause is not of the clearest Description. The Sense, however, that I gather from it appears to be thus: viz., Clauses 76 and 79 of this Code give People the Power of taking away Life in the Cases therein mentioned; he therefore commits voluntarily culpable Homicide in Defence who kills another under any Circumstances that do not come within the Provisions of these Clauses. A few extra Words to render the Meaning quite clear would not be lost.

Illustration (b).—Suppose here that Z, being shot, does not die, is A liable to Punishment?

Illustration

Illustration (c).—If the Right of private Defence extended to the voluntary Infliction of Death in Cases of Assault, not enumerated in Clause 76, it would most certainly include that of an Assault not of a dangerous Description ; how, then, under these Circumstances, A's killing Z should be an Offence, as is here asserted, I cannot comprehend.

Clause 305.—I fear that Clause 327, here alluded to, will often be the Means of a Villian's escaping severe Punishment under its Provisions.

Illustration.—Here it appears that a Man wishing to murder a Woman has, in order to escape hanging for doing so, only to add to it the Crime of attempting to ravish her. No, he does not ravish her, the Villain ! but only (in attempting to do so) kills her ; *i. e.*, commits the Offence in Clause 304, and therefore he is to be imprisoned for not more than Sixteen nor less than Two Years !!

Clause 308.—This Clause requires numerous *practical* Illustrations, whereas, Illustration (a), I fear is not so far improbable as it is that the Crime specified in it should ever be committed at all ; it is, at the same Time, one of a most unlikely kind ever to be committed in India, where Spring Guns are unknown.

Clause 309.—It should herein be clearly stated whether Death is supposed to be caused or not, and whether, if actual Death be not caused, but only Hurt or grievous bodily Injury, the Offender is to be punishable under this Clause, or under Clauses 318, 319, &c., or whether the Punishment is to be cumulative.

Clause 310.—What Proof would here be deemed sufficient legal Proof that a Man is a "Thug ;" the penal Provision is so severe under Clause 311, that there ought to be no Doubts on this Point, if a few Illustrations could tend to remove them.

Of the causing of Miscarriage.

Clause 312.—The Words "*Good Faith*" occurring in this Clause are likely to be a sad Bar to the Infliction of Punishment under its Provisions. This Crime is so common, so brutal, and so unnatural, that Three Years for the worst Description of Cases appears to be an inadequate Punishment. The sooner it is put a stop to the better, be the Enactments ever so severe. *

Clause 313.—Hurt caused to the Woman is here specified, from which it would appear that if the Woman miscarrying is not thereby seriously injured, the poor Child, whose Existence has thus been cut off in its Bud, is considered a mere nothing ; and that for destroying that Life, as if it was not that of a Human Being, no Punishment is to be assigned. Murder, then on a *small Scale* is decidedly sanctioned ; *i. e.* the Culprit is not to be hanged.

Of Hurt.

Clause 314.—From the Seventh Head it would appear that a Man may extract as many of his Neighbour's Teeth as he pleases, without grievously hurting him. The Eighth Provision is one of the most objectionable Kind, unless the Evidence of the Civil Surgeon be required by Law in all such Cases as to the positive Nature and Extent of Injury ; and also whether in his Opinion such Hurt would deter, or is likely to deter, a Man from following his ordinary Pursuits during the Space of Twenty Days ; for instance, a Case of grievous Hurt may be decided before Twenty Days have elapsed, when, instead of being punished for grievous Hurt under Clause 319, he would be only punished for Hurt under Clause 318, if the Precaution of having the Civil Surgeon's Deposition or Statement taken were to be omitted.

Clause 318.—The Punishment here is One Year, or 1,000 Rupees Fine, whereas by Clause 342, for a Person assaulting another, who surely cannot be understood to be doing anything but voluntarily causing Hurt, the Punishment may extend to a Term of Three Months, or a Fine of 500 Rupees ; but perhaps the Punishment is intended to be cumulative.

Clause 323.—It might be as well to insert the Words Machine or Engine after the Word Instrument.

Clause 324.—Ditto.

Clause 325.—The Offender is here described to be as neither intending or knowing that he is likely to cause the Hurt that he does cause ; how then can it be Justice to punish him ? Did he attempt to cause Hurt on grave and sudden Provocation to the Person whom in all Probability richly deserved Chastisement, and accidentally and unintentionally hurt another, surely he would not deserve to be punished. It would be better perhaps to state in this Clause thus : " whoever voluntarily causes Hurt, on grave and sudden Provocation, to the Party offering such Provocation," &c.

Clause 326.—Ditto.

Of Assault.

Clause 341.—This is liable to daily Abuse.

Clause 345.—If "*Malice prepense*" be here fully proved, I do not see why, because the Offender is timely prevented from fully executing his Purpose, this Circumstance alone should be urged as a Reason for only giving him One Third of the Punishment he would

otherwise receive. Until the One Party be grievously hurt, it may be hard to prove that the other intended to hurt grievously; but if the Intent is fully proved, why spare the Punishment?

Clause 347.—Here the Words “to outrage a Woman’s Modesty” occur. All People may not be exactly agreed on this Point, for Cases may happen (putting gross ones out of the Question) that may outrage one Woman’s Modesty that would be thought nothing of by another. Even a Kiss, that would be highly resented by a Lady, might not be looked upon as an Affront by her Maid. A few Illustrations here might be of use.

Clause 351.—It would appear from this Clause that there is no Case of grave and sudden Provocation of a Nature so serious that a Man is justified by Law in taking the Law into his own Hands, as no Reference is here made to the Law “of private Defence.”

Clause 352.—“This show of Assault” is so liable to be abused as to render it doubtful whether this Clause ought to remain Law. Numerous Illustrations here, showing exactly what Amount of Proof is sufficient for a Judicial Officer to convict on, would be of great Use.

Of Rape.

Numerous Illustrations ought here to be given, showing what is deemed in Law to constitute Penetration, and what Proof is to be deemed sufficient to convict upon, for on this Score all the Judges on the Bench might differ in Opinion. It is, moreover, by no means clear whether a Whore can be raped, and if so, and if married Women and Widows can also be raped, the whole Onus of Proof depending on Penetration, unless the Parties are caught in the Act, it is by no Means clear how in any Case, but that of a Virgin, Penetration can be proved; unless the raped Woman’s simple Word be taken as positive and sufficient Evidence.

There is no Punishment for an Attempt to commit Rape, which appears absolutely necessary; for, though the Rape could not be proved, the Attempt to commit it might, and the Punishment ought to be of a most heavy Description.

Note M. Page 60. (See the First Paragraph in the Page.)—I imagine that Mr. Livingston must have laid down his Law on the Principle that supposing violent Provocation would justify a Man in killing another, Provocation of a less violent Description would justify him in beating another, and thus great Difficulty would arise in defining what Kinds of Provocation would render Assault justifiable. If, as a general Rule, Provocation is admitted as a Ground for taking the Law, even to killing, into one’s own Hands in serious Cases, it follows as a general Rule that those who do so in less serious Cases ought not to be punished for doing the same to a lesser Degree.

See Page 63, the First Paragraph.—It is here laid down that because a House consists only of a few wretched Mats, and is propped by a few Bamboos, amounting in Value to not more than 20 Rupees, that this is a Reason that the Owner on killing an Incendiary who attempted to burn him out of it or to Death in it is liable to Punishment, although, as a general Rule, a Man is permitted to kill another if he has no other Means of preventing him from burning his House. This, as a Matter of Justice, appears incomprehensible, for it is not easy to perceive why a 20 Rupees House should not be equally valuable to a poor Man as a 20,000 Rupee one to a rich one; and if so, why should the mere Fact of a Person’s being rich or poor be allowed to make the Distinction of the one’s being allowed to kill with Impunity while the other cannot; and yet the Law Commissioners say that not to punish the 20 Rupee House-holder would be generally condemned as shocking Injustice. It is, however, easy to imagine where a wealthy Man sees an Incendiary attempting to burn his Shed or Out-office, really only worth a Trifle to him, and shoots him forthwith, that under the peculiar Circumstances of the Case he might be liable to Punishment.

See Page 65, the First Paragraph from the Top of the Page.—The Principle by which a Legislator should apparently be guided is the Consideration of whether the Crime is such that the Offender must *know* that *bad Consequences* in all human Probability may ensue, although he may not know the exact Nature of the probable Consequence. If this be laid down as Law, then all Thieves, &c., who are willing in committing One Depredation to run the Risk, however remote, of the Consequences attendant on committing another Crime, are surely liable to Punishment, because 999 Thieves out of 1,000 do not kill in the Manner described, by pulling the Trigger of a Pocket Pistol, in an Attempt to steal. They may consider themselves uncommonly lucky in not having done so, but that because they have been so lucky this is by no means a reason why the Thousandth Man should not be punished. That such a Person should be hanged would be indeed unjust, because the *Intent* should be punished and not the possible Accident. But here the Thief intended to run every Risk before thrusting his Hand into the other’s Pocket, and should be severely punished if any serious Consequence results from his criminal Rashness.

Page 66. See the last Paragraph in the Page.—It is here stated that a Charge of Abortion often leaves a Stain on the Honour of Families; of this there can *in English Families* be little Doubt, but when we come to consider *Indian Families* the Matter may wear a different Aspect. Not but that there are Cases to be found among the Natives of India where such a Charge would be a Stain on their Honour, but that the excessive Frequency of the Crime in India most imperatively demands a rigorous Punishment.

Punishment, whether the Mother be a Party or not. The Cases that occur where no Dishonour is attached to the Crime are certainly among the lower Grades, and among many of the highest ones infinitely more numerous than those where it is owing possibly to the numerous Widows caused by the Hindoo Law. I cannot, however, conceive that the Power of bringing false Accusations will be a formidable Engine in the Hands of unprincipled Men, or a Terror to respectable Families, or that the Punishment of Abortion would be likely to entail more Suffering on the Innocent than on the Guilty, and that therefore it ought to be left wholly unpunished where the Mother is a Party. What Weight an Argument of this Nature may have in England I know not, but in India I think it is not deserving of the Weight and Consideration that the Law Commissioners have attached to it.

Page 67. See the 6th Paragraph from the Top.—It is stated that it is desirable that the Law should make a Distinction between a severe Wound and a Scratch which is healed with a little Sticking-plaster. Surely the Law ought rather to consider the Intent of the Person inflicting the Injury than the trifling Nature of the Injury he may happen to inflict.

Page 66. See Paragraph Second.—It is stated that a murderous Intention having been established, the Severity of the Hurt ought not to be considered in apportioning Punishment. This appears to be sound Reasoning, but it leads to this, that if the Severity of the Hurt is not to be considered when a murderous Intent is proved, neither ought it to be considered in awarding Punishment when the Case is one of less Atrocity than Murder. That a Man has not availed himself of the Means most likely to ensure Success, or that the Means are not such as to come under an exceedingly aggravated Head, is not the Fault of the Offender if his Intent be malicious and is proved to be so. It may so happen that his Means were small, or his Ignorance great, and thus his Means were curtailed, and therefore the Circumstances, being aggravated or mitigated, ought not to make a Difference in the Punishment awarded, otherwise all Persons that commit Murder ought to be executed differently,—some with lingering Tortures, others by hanging at once,—according to the Atrocity of the Circumstances attending the Murder; and this, holding good in the more heinous Offence, must of necessity be of equal Force in smaller Crimes.

CHAPTER XIX.

Clause 363 (c).—Suppose that the Dog withstood the Temptation, or being about to follow, the Thief is caught in the Act before the Dog moves; then, Theft not having been committed, how is the Thief to be punished? It is clear that his Intent is just as bad as if the Dog had moved. The Attempt to thieve surely ought not to be left unpunished. (d) How is the Direction in which A intended that the Sheep should move to be known and proved? (e) The Watch being A's own Property it does not appear very clear what A's taking his own Watch away has to do with the Price of it, or with Value equal to its Price. It would seem that A has delivered his Watch to a Jeweller to be regulated; by what Law can the Jeweller Z retain the Watch, even supposing that A owed Z a Sum equal in Value to the Watch? On the contrary, Z would appear to be subject to Punishment under the Chapter headed "The illegal Pursuit of legal Rights," Clause 460. How then can A be punishable for Theft for taking away his own Property? The same Remark applies to the following Illustration (n). It appears a direct Permission to Z to detain in his Possession any Property he can lay his Hands on as a Security for A's debts to him. At the least it holds out a most pernicious Countenance to such Acts. (w) This Illustration affords an ample Source for the Practice of all Kinds of Villany. A and Z for instance, being Partners, quarrel, and under this Clause one gets the other punished for Theft.

Clause 365.—The Punishment here mentioned appears to be too slight. A Servant being engaged in the treacherous Act of delivering up his Master's Property to a Thief, or a Thief being guilty of the Crime of seducing a Servant to his Interest, ought to enhance considerably the Crime of Theft, whereas the Term of Three Years cannot here be exceeded.

Extortion.

Clause 368.—This Clause is liable, to be much abused, owing to the Means it affords to Parties of making false Complaints.

Clause 370.—This Clause is liable to great Abuse in a similar Manner.

Of the Receiving of Stolen Property.

Clause 389.—It is here stated that stolen, &c. Property subsequently coming into the Possession of a Person legally entitled to the Possession of it ceases to be stolen Property. Surely it cannot be meant to be inferred from this that the Thief therefore ceases to be a Thief, or the Receiver ceases to be a Receiver, and is not to be punished. As this Point is thus left apparently doubtful, it would seem better to explain it more fully at once. A having got back his stolen Watch the Watch has ceased to become stolen Property; but before getting it back A did not accuse the Thief Z of Theft; how then is he to come forward afterwards and accuse Z of being a Thief or a Receiver of Stolen Property, such Property at the Time of Complaint being *no longer stolen Property according to Law, and consequently not cognizable as such by Law*. A Magistrate would ask in Evidence for the stolen Property. A could only say, I have no

stolen Property to show, but this is the Property that was stolen, and has now ceased to be stolen, as I have since recovered Possession of it. The Theft or the Crime of receiving is decidedly punishable, and the Quibble is a mere one of Words. However, there could be no Harm in inserting a few explanatory Words in the following Clause, or an Illustration.

Clause 390.—Thus I would add these Words here, viz., “Whoever fraudulently receives any stolen Property, or Property that was stolen, be the subsequent Denomination of such Property what it may, knowing,” &c. &c.

Of Cheating.

Clause 392.—Illustration (k). It is here stated that A, having practised a Deception, may, in certain Cases, have a “legal right” to the Price of the Article he has imposed on another. A few Illustrations of such Cases would be extremely useful as a Guide, as the Deception being once admitted, there can be no Question as to the Intention of A’s causing wrongful Gain to himself by means of wrongful Loss to Z, and thus a Magistrate would, unless he had some Guide, be often sorely puzzled how to act.

Of Mischief.

Clause 406.—The Sum of 10 Rupees is objectionable. It ought to be much less. Say 4 or 5, or else, Half the Tattoos and Cows, to say nothing of Goats and Sheep, in India, not being worth more than from 5 to 10 Rupees each, a Person maiming them would escape Punishment under this Clause, and surely a 7 Rupee Tattoo must, in Justice, be held to be equally valuable to a poor Man as a costly Horse to a rich one.

Clause 408.—The Mischief committed here, to a Bridge for example, might be of a most serious Nature in its Consequence. Half a Dozen or more People might be killed by its breaking down. Surely for such a Crime Three Years is too little Imprisonment.

Clause 411.—The Punishment of One Year, though sufficient for most ordinary Cases, does not appear to be so for those of an aggravated Nature. A Zemindar of Power makes this a Means of ruining his poor Neighbours, and adding their Possessions to his own. They are unable frequently from Poverty to complain, and often by a Fear of being ill-treated. A Crime of this Description requires an exemplary Punishment.

Clause 415.—But supposing that the Vessel should not be decked, what then is to be the Punishment? The mere Fact of a Deck being on a Vessel cannot make any Difference in the Atrocity of the Crime. There are, moreover, many Vessels without a Deck, positively larger than some that have Decks.

Of Criminal Trespass.

Clause 423. Fourth Head.—But suppose a Key is found in the Lock that was left there by Accident or Mistake and the Thief enters, has he then committed House Trespass, or not? Illustration (h). This Definition is liable to much Abuse. Almost anything can be construed into a “Show of Assault,” and directly this is the Case the Right of what is called “Private Defence” commences, and therefore under Clause 79, Z may take away A’s Life.

Clause 439.—Should the Criminal Trespass here mentioned be in addition to the Crime of Housebreaking, is the Punishment to be cumulative?

CHAPTER XX.

Clause 453.—The Punishment here appears inadequate to the Offence. The Mischief done in a Case of this sort might be such that no Imprisonment or Fine paid by the Offender could ever repair. An extreme Case should have a heavy Punishment, or else Parties, though they might hesitate at committing a trifling Offence, would not be deterred from committing One of great Enormity, when the Profit would be very great, or a Spirit of Revenge might be satiated.

CHAPTER XXI.

Clause 456.—If the Definition Property Mark include a Boundary of a Field or Village, the Term of Imprisonment for One Year appears to be too slight. (See Clause 411, and the Remarks on it.)

CHAPTER XXIII.

The result of not making Breaches of Contract between Servants and their Masters Offences under the Code, will be that the Native will immediately take advantage of it to practise Extortion and raise his Wages when he thinks his Master or Mistress cannot supply his Place. To prosecute him in the Civil Court will do no good, for the Service is the Thing most frequently required, and not the few paltry Rupees that might be by this Means decreed in the Master’s Favour, even supposing he could realize them. There is, however, One peculiar Case that requires to be visited with severe Punishment. This

is the partial or total Desertion of a Master or a Mistress by their Servants when going on a Journey. Now at Out-stations Servants of any Description are procured with the utmost Difficulty, but more particularly Maid Servants and Mehtrannees. Conceive the Distress that a Lady would be reduced to on being thus wantonly deserted; the Servant saying that she could not leave her Home, and making this a Plea for extorting double and treble Wages. There are many such Situations, where the Annoyance and Inconvenience that a Rascal of a Servant could inflict would be incalculable, for which no Damages could compensate. The Master or Mistress is here completely in the Servant's Power, and must do just as he pleases, or else work for himself. Such is the Reality; and the Reason given by the Law Commissioners for not inflicting Punishment, viz. their Fear of giving to bad Masters a Means of Oppression without affording Protection to good ones, seems to reflect most seriously on the Judicial Officers before whom these Cases are to be tried, as they are to be the Tools through which a bad Master is to oppress his Servants.

CHAPTER XXIV.

Clause 467.—This appears to be Legislation for a very improbable Case indeed. It is hard to believe that such a Case is possible.

Note Q.—It is stated in the last Paragraph, Page 89, that there is no Punishment for mere conjugal Infidelity. The Case put of a Woman knowing a Man to be married, and still pressing to marry her, is exceedingly improbable. That the *Man would urge her to marry him* is easily conceivable; and putting the Case thus, or, indeed, taking it as put by the Law Commissioners, that a married Man, paying Attention to one of his Countrywomen, and urging her to live with him; in either Case the Man, if he be not a Villain, is anything but a moral Character. That he pressed her to marry him is an immoral Act. That she does not consent to live with him, except as his Wife, does not make him the less a Villain, or a bit more a moral Character; it rather enhances his Villany. He, a married Man, has succeeded in seducing a Woman to comply with his Desires; to make the Act more infamous, he goes through the religious Ceremony of Marriage, thereby telling a direct Lie, *i. e.* pledging himself to be faithful to the Second Wife, when he has already pledged himself to be so to his first one till Death. But this refers merely to the direct Sanction allowed by the Law to an atrocious Act of Immorality. He is supposed to act by his Second Wife's Consent; but it is not stated *how* that Consent was obtained, or what may have been the specious Sophistry and Persuasion used by the Seducer; for in no other Light can such a Man be looked upon, unless by those who argue that Marriage is a mere Invention of Man, and that Men and Women ought to live together promiscuously. But as such I cannot conceive to be the Intent of the Law Commissioners, though their Law has a direct Tendency thereto, I shall merely look at the Act in the Light which Morality adds to those Principles on which the Preservation of Order in Society depend. The Law Commissioners ask what Individual this innocent Creature has injured. Poor Man! it cannot be his Second Wife, seeing that he has only acted by her Consent. Immediately after this Assertion comes another, viz., "The legal Rights of the First Wife and of her Children remain unaltered; she is the Wife,—the second is the Concubine." Now how these Facts can be reconciled I know not. The Fact of the First Wife's living in Adultery cannot make the second less a Concubine; it cannot raise her more in the Eyes of Society,—it cannot provide legally for her prostitute Children,—it affords her no Remedy if the Husband chooses to turn her adrift,—nor does it open a Place for her Re-admission into Society,—neither can it justify the atrocious Villany that induced the Husband to violate his Marriage Vow, and, by seducing an innocent Woman, entrap her into going through a Marriage Ceremony, the very Basis of which is an Introduction to a Life of Infamy, and, in all Probability, one of extreme Misery. Now put the Case the other way;—for what Right has a Legislator to frame Laws on merely assumed Positions of a questionable Nature?—Suppose that the First Wife is not living a Life of Adultery, but, on the contrary, is deserted by her Husband, who, wishing to indulge licentious Passion, thus endeavours to take advantage of there being no Law for punishing Bigamy. Can there be a Doubt as to the Injury thus wantonly inflicted on the Feelings of a virtuous Woman, to say nothing of what must be the Sensations of one of a highly religious Character and sensitive Feelings? Can it be for a Moment asserted that an Injury of the darkest and foulest Kind has not been thus inflicted? That there should be no Remedy is indeed lamentable; but that a Law should sanction Bigamy, by not punishing it, and thus afford a direct Permission for Acts of this Nature, would not only be lamentable but atrocious, being founded on Principles giving a Liberty to any unprincipled Man to do Acts the Effects of which would shortly make Society little better than a large Establishment of Ill-fame. That a Man should keep a Mistress while married is surely to be deprecated, but that the Law should allow him to add the Ceremony of Marriage as an additional Mockery to the original Insult offered to his Wife, would indeed be intolerable. But here is a Code that proposes that Bigamy should go unpunished; and here is the Argument used, viz., "It is true that, in English Law, Bigamy is an immoral Act, but, though it may be a most serious Crime, still it may be attended with Circumstances which may excuse though they cannot justify it." (See the Second Paragraph, in Page 89.) It is not very clear how any Act that is in itself *unjustifiable*, and which no Cir-

circumstances can justify, can be excusable. That there may be a few insulated Instances, nearly approaching to this, where in Law it would hardly be thought necessary to inflict a severe Punishment, is easily conceivable ; but even this cannot make an unjustifiable Crime legally excusable. That a just Judge should immediately make a Distinction between Cases differing in Criminality may be reasonably supposed ; and it would appear, therefore, better to leave this Discretion with him than at One fell Sweep omit to punish the Crime of Bigamy at all. The Profanation of a Ceremony that is of the utmost Importance to Society ought to be punished on this Principle alone, that that which is of the utmost Importance to Society ought, under no Circumstances, to be trifled with, be the Consequences trifling or be they serious. The *Fact of the Crime* does not depend on the Atrocity of the Circumstances attending it ; it is a *Crime in itself*, and as such deserving of Punishment. That the Seriousness of the Offence, and the additional Injury it inflicts on Society, should be Reason for punishing it severely is only reasonable ; and, *vice versa*, when the Offence is not of so grave a Nature, this Award of Punishment must depend on the Judgment of the Judge, as he considers the Crime to be serious or trifling ; and that a Judge should have Power by Law to punish with Severity if necessary, is only just ; whereas not a single Argument is apparent for only punishing atrocious Cases and entirely omitting those of a more trifling Kind. This Argument rests on the Principle that Crime, tending in any way to injure those Ties which bind Society together, should be punished ; putting the Argument of punishing Crimes against Morality,—be such derived from Reasoning, from Nature, or Religion,—out of the Question. But when all these combine, when the moral Law implanted in manly Nature, when his Religion, and, lastly, his common Sense and Duty towards Society, unite in demanding Punishment, the Omission of it appears inexcusable. Nor does Fact of a Mixture of Races, Birthplaces, and Religions, giving great Facilities for practising Deception and Fraud, which it would be difficult to discover, and more so to convict upon, appear to lessen the Weight of the Argument. That such is the Case, if it really is so to any Extent, is to be lamented ; but the very Fact of such being the Case would seem rather a Reason for punishing such Crimes as were detected than for not punishing them at all, merely because it was not always possible to convict. After a Penal Law for Bigamy, &c. &c., is promulgated, it may be possible to alter or amend it when the Law of Marriage and Divorce has been revised ; but to wait ever doing so till the Laws have been revised, at the present slow Rate of Legislation, of which the Penal Code is a Specimen, would be to wait for at the least many Years ; by which Time the Effects produced for the salutary Want of it would, in *all Probability*, be most serious. (See the last Paragraph in Page 90.)

Adultery is to be treated only as a civil Injury and not subject to penal Provision. The Positions established by the Law Commissioners regarding it (Page 91) are, firstly, that as the Law stands injured Husbands are induced to take the Law into their own Hands ; secondly, that no Native of a high Class seeks Redress from the Courts of Law ; and thirdly, that those who do go to the Courts, go there, not with the Feelings of injured Honour but in order to get back the Wife, looking on her as a lost Menial, or the Value of her lost Services, or to be reimbursed for the Expenses of his Marriage. In short, that those whose Feelings of Honour are painfully affected by the Infidelity of their Wives will not apply to any Tribunal ; those whose Feelings are less delicate will be satisfied by a Money Payment. That Adultery should not be punished by a penal Enactment, with the Punishment mentioned in Clause 40 of this Code, I admit : that Damages should be allowed by a Civil Court may be just or it may not ; that Legislation for Adultery is difficult, but that it is at the same Time most important, is also clear ; that a Penal Code is not to be considered as a Body of Ethics is true, but that it should by any *Enactments* or *Omissions* give a Sanction to any Species of Immorality is to be deprecated. It is by no means sufficient that a Legislator should rest content with not punishing an Act that he knows to be immoral ; he must take care that, though he cannot always punish, he does not give a Sanction to Vice. It becomes then a Matter of Consideration whether there is any Punishment (save those in Clause 40) or Award of any Court, such that a reasonable Man would, however high or fine his Sense of Honour was, be satisfied with it, or that by the Infliction of which a Stop could be put to the Crime of Adultery, or that of a Man of nice Honour taking the Law into his own Hands. It is not my Intention to comment on the Evils attending the Commission of Adultery, or the bad Effects of a Man's taking upon himself the Vindication of Aggressions which he finds impossible to be rectified or compensated for by Law ; it is enough to know that if any Scheme could be reduced to Practice (however faulty it might originally be) whereby Duels were prevented and the Sense of Honour in a worldly Sense satisfied (though perhaps not the Feelings) without having recourse to Duels, and Inducements to Frailty in any Degree put a Stop to, that the Gain to Society would be great. For this Purpose I propose, but with Diffidence, the Compilation of a "*Code of Honour*." This would take cognizance, generally speaking, of all Offences where a Man considered his Honour unjustly assailed. The Fact of being reduced to enter a Civil Court where Damages are awarded conveys a Feeling which is extremely repugnant to the Delicacy of a Man of Honour. The very Fact of Damages being awarded, however trifling they may be, he imagines will leave an Impression on the World that pecuniary Motives as well as the Insult offered to him have had some Effect in inducing him as an injured Husband to complain ; and so long as this is the Case Men

of very high and fine Feelings will much rather run the Risk of killing another, or being killed themselves, with all the Consequences incumbent on Duelling, than enter a Civil Court. This Objection would in a great Measure be overcome by a Reference to a Court of Honour; where, by the Code there used, no other Crimes but those of Honour were tried, where Damages could not be obtained, where the Adulterer and Adulteress cannot be criminally punished under Clause 40, and the Award at once clears his Character and establishes a Blemish on the opposite Party, the Effects of which in Society would be equally as powerful as any Term of Imprisonment or any Amount of Fine that could be imposed. The Result of such an Award would clear him in the Face of Society from any Imputations that might be cast on him for discarding his Wife, and would form the Groundwork for enabling him, if he wished, to obtain a Divorce; it would put Society on their Guard with respect to the Adulteress and her Paramour; and the Publicity that is always given to Cases of criminal Connexion and to such Trials would be the most effectual Check to the Frailties of either Sex. It is Publication of the Crime that is dreaded, and were it not for the salutary Effect thus produced,—were it not that Shame clings to a Man longer than religious Principle,—it would be hard indeed for Society. Legislation then should be adopted as much as possible to the Feelings by which Persons are actuated in their Conduct, in order that by playing upon and checking these, Crime and Offences against Society may be prevented. Thus a Thief is imprisoned and made to labour, and why? Simply because, being destitute of all fine moral Feelings, to produce a good Effect upon him his personal Feelings must be operated on. Could the finer Feelings be touched without corporal Chastisement it would be all the better. Could Men be shamed into not committing Crimes, nothing further would be necessary or desirable. It is therefore on this Principle that I propose that no Punishment under Clause 40 shall be awarded by the “*Code of Honour*,” as the Feelings of Shame in all Cases likely to be brought before a Court to be tried by that Code are still sufficiently acute to render any other Punishment unnecessary. But in addition to Cases of Adultery, &c. there are numerous Cases where Honour is concerned. It would be lamentable to allow such to end in a Duel when an Award of a Court of Honour could answer the Purpose equally well. For instance, how numerous are the Instances of a few trifling Words, spoken under the Influence of Wine or excited Feelings, leading to deplorable Results,—of a Man wantonly, through consciousness of superior Strength, &c., endeavouring to bully others of a quiet Disposition under the Idea that from his being an excellent Shot the Man whom he is endeavouring to annoy or make a Fool of would hesitate to meet him. Again, there are many Cases when a Man considers the Person offering the Insult beneath his Notice; he looks upon him as a base mean Scoundrel that it would be degrading to meet, and yet is reduced to a Dilemma, however courageous he may really be, of running the Risk of being deemed a Coward if he hesitates to go out with him. In addition to this innumerable are the Cases when Persons from religious Feelings are restrained from fighting a Duel, and are thus, however truly courageous, frequently deemed Cowards. Thus the Person insulted is often precluded from going into a Civil Court from Delicacy of Feelings and Fear of unjust Imputations, and from fighting from a Sense of Religion, and is thus reduced to suffer doubly while his malicious Insulter is triumphant. Now the “*Court of Honour*” would be an effectual Remedy for all such Cases, and I cannot doubt that all sensible and religious Men who were unfortunately reduced to such a Strait would, rather than daily suffer Insult, at once enter such a Court in Self-defence. What would be more satisfactory to a Man of fine Feelings than to have the Award of a Court of Honour declaring that his Conduct throughout has been most gentlemanly, and that of his Opponent that of an unprincipled Scoundrel? How would the latter face the World after such an Award? where would he hide his diminished Head? what an awful Fall for the Bully? It would then not be the strong Man but the Gentleman that would rise in public Estimation, and the latter would immediately rise in Society doubly on having his Character cleared from all doubtful Aspersion. What indeed could be more favourable for him in the Face of the World than that he had acted in a difficult Dilemma as became a true Gentleman. The very Notoriety of the Fact would make him Friends, as it would for the same Reason cause the Blackguard to be shunned. But such a Court might be even more extensively useful, and made to comprehend Cases of Defamation of Character; for instance, in Cases where Decision of whether a Person’s Character was defamed or not was desired, instead of the Damages that might be gained by an Award of a Civil Court. It would here, however, and in some other Cases, be necessary to provide that the Award of the Court of Honour should not afterwards be brought up in Evidence in a Civil Court to obtain Damages. The only Case in which the Award ought to be available elsewhere would be to procure a Divorce in an Ecclesiastical Court, otherwise the Court of Honour would often be made a Tool for procuring Damages in the Civil Court. The simplest Plan for such a Court would be to have Decisions given by a Jury of Twelve Persons, to admit of no Pleadings except the Parties and their Friends or Witnesses, to allow the Judge to sum up, the Jury to decide, and the Judge finally to declare what, according to the Code, was the Grade of Stigma to be attached to the Offence. An Award might be given thus:—That A behaved throughout the whole Affair in a most upright and gentlemanly Manner, whereas the Conduct of B was the very reverse to what could be expected from any Man guided by honourable or gentlemanly Feelings; or thus,—the Dispute in question had its Rise in a mere Trifle, owing to a Misunderstanding between the Parties,

which being cleared up no further Remark is necessary ; or thus,—the Conduct of A appears to have been rather hasty in applying to himself Remarks that B had no Intention should be so applied, &c. &c. That Decisions ought to be given exactly thus I do not say, but that the Circumstances of the Case would always prompt what Decisions should be awarded. That the Code of Honour should be made at once complete, or to provide for every one of the Cases that might be brought before the Court, cannot be expected ; but that a rude Outline might be formed, leaving a great deal to the Judgment of the Judge and Jury, is very possible. It is, moreover, of the utmost Importance that there should be no Expense attending Suits instituted in the Court, that, on the contrary, every Encouragement should be given to their Institution ; that the Judge should be at liberty to reject Suits evidently absurd or exceedingly frivolous, and bring those that were of a serious Nature to the Notice of the Jury. The Subject is replete with Interest, and is of the utmost Importance to Society ; but having said thus much I am unwilling further to obtrude my own Speculation. Should there be anything worthy of Consideration in what I have endeavoured to draw a faint Sketch of, I am conscious that there are those who can handle the Subject with infinitely greater Address, and it will be for their Consideration to resolve whether such a Code of Honour is really desirable, and if so, how it ought to be worked, how the System of Procedure of such a Code should be regulated, and whether the Decisions of a single Judge would be deemed sufficient, or whether a Jury should be empannelled, &c. &c.

See Page 92.—The Law Commissioners have here no Doubt that the Natives would be far less shocked by the total Silence of the Penal Law touching Adultery than by seeing an Adulterer sent to Prison for a few Months, while a Coiner is imprisoned for Sixteen Years ; and again they apprehend that among the higher Classes nothing short of Death would be considered an Expiation for such a Wrong, and therefore, because they imagine that a trifling Punishment would be regarded as absurdly and immorally lenient, they think it better that no Punishment should be inflicted at all. The Substance of this appears to be that because *they imagine* that the Natives *would imagine*, therefore, because they cannot do as much Good as they like by a lenient Punishment, it is far better to do no Good at all by inflicting no Punishment. Now, putting Ideas and Imaginations out of the Question, the real Fact is that Nine Natives out of Ten would never think about the Matter, and it is just as reasonable to suppose that the Tenth *who did think* might not view the Matter in the same Light as the Law Commissioners. Suppose they do, it is equally easy to suppose that they are aware of the Difficulties attending Legislation for such Cases, or, whether they are so or not, that without any Outrage to their Feelings they could be made aware that such Difficulties existed, and that therefore if it were proposed by the Legislature to visit a Crime with a slight Punishment it would by no means always follow that that Legislature looked on it in any other Light than as a great Crime. Now what I verily believe is, that if the Law is to be that People may commit Adultery with total Impunity, the Result will be that Adultery will become common among all Classes. That Natives have a Plurality of Wives, and that young Wives share the Attentions of their Husbands with several Rivals, is a State of Things to be lamented ; but this is hardly putting the Case fairly. Has any Computation ever been as to how many Hindoos have only One Wife for those who have Two or more ? Has the same Computation ever been made regarding the Mahomedans or other religious Sects ? If not on what Data is the Law made or omitted ? The Calculation will, or I am strangely mistaken, average greatly in favour of the Number who have only One Wife ; that those who have Two or more will be comparatively small, and those who have more as compared with those who have Two still smaller. There is, however, another Consideration of some Weight ; it is, that a Person may be trained to anything by Education and Custom. Such is the Case with Females in a Zenana. Now were it possible that a Number of well-educated English Ladies could be crammed into a Zenana by their Parents, the Case would indeed be widely different. The Refinements of Feeling on the one hand would be the Cause of their leading wretched Lives ; whereas the Education of the Native Women completely deadens their better Feelings ; they enter the Zenana as a Matter of course, are each a Part and Parcel of a Number of Wives as a Matter of course ; and it is to be feared that if there be no legal Punishment for Adultery that a Native of Respectability would not hesitate to murder his Wife, as a Matter of course, if she was given to Frailty, could he succeed in getting her back into his Power. The Law might be framed in such a Manner that by leaving somewhat to the Judgment of the Judicial Officer, either a heavy or a slight Punishment might be awarded. Supposing the Religion of a Native to permit Polygamy, it does not follow that he would of necessity suffer any of the Penalties of his Religion for not having more Wives than One, or that his Religion would be outraged by preventing him from having more than One Wife at a Time. No Religion prevalent in India commands, though they may permit, a Plurality of Wives. Whether it be visionary or not to strike at the Root of Polygamy is at least very questionable, for if Polygamy is an Evil to Society any legal Measures tending to put a Stop to the Evil cannot be bad. This might be done in many Ways,—for instance, by making the Children of the First Wife legal Heirs to the Exclusion of those of the others who were married after the Promulgation of the Law. But it is very evident that if Matters be left as they are, that Education and Time will not put a Stop to Polygamy within the next 1,000 Years, if then. If, to use the Words of the Law Commissioners (see Page 93), the *Matrimonial Contract*

Contract be at present unjust; unreasonable, and not mentally beneficial, the sooner Steps are taken to make it the Reverse of what it now is the better. Morality and the Benefit to Society demands this, whatever Indian Policy may.

CHAPTER XXV.

It would appear that here, as in many other Parts of the Code, the Intention of the Offender is partially overlooked. Here it is stated, in *Clause 469, Explanations*, that if the Imputations be such that, if it were believed in the Quarter in which it was intended to be believed, the Reputation of the Person concerning whom it is intended to be believed would not be harmed, then that Person has not been defamed. Now, if it was proved that the Intention was to defame, and that the Report was spread in the Belief that it would succeed, but did not, surely the Offender ought not to escape under the Plea that the Imputation was one not likely to harm the Reputation. Many hold their Reputation as dear as their Lives, and to destroy the one is nearly tantamount to destroying the other. Now, when it is considered that many Things would defame One Person that would not affect another, every Aid should be afforded the defamed Person, instead of Clauses held out to the Defamer by which he may escape Justice. Illustration (h). How the People in this Illustration could be ignorant of the Fact that defamatory Matter must have a Tendency to defame, I know not; but it is clear, that whatever their Intentions might be, that to prove them to be bad would be difficult, while this Illustration stands forth in their Defence.

Clause 470.—This Clause gives a direct Permission to the Exercise of all Sorts of impertinent Meddling in the Affairs of others, often tending to make People ridiculous in the Face of Society. That there should be no Remedy, however, against malicious Defamation appears to be a monstrous Evil. The Truth of the Matter has nothing to do with the Fact of Defamation in many Instances. In Legislation, both the Matter of the Fact of Defamation should be considered and the Intention of the Defamer, if the Intent be proved. Though the Party whose Reputation, &c. a Person wished to injure be not defamed, still that Person ought not to escape from Punishment. If the Party be defamed, to allow him to escape would be still more manifestly unjust. Suppose that a Man, A, for some Cause or other, has made some one, B, his Enemy; suppose, at the same Time, that B caused an Article to be printed in the Papers, stating that Five Years ago A had committed Theft; this is thus circulated; has A any Right to Justice? is he entitled to a Hearing? may he be allowed to prove that he is not a Thief? that he never was one, and that his Reputation has been most maliciously assailed? Till the Proof be gone into, how can it be known whether he was a Thief or not Five Years ago? The Defamer has only to say that what he has asserted is the Truth, and, instead of being called on to prove it, the poor Fellow whose Character has been injured is called upon to show that his Defamer was influenced by bad Motives.

In Page 98, Note R, it is stated that if the Defendant avers that the Imputations complained of as defamatory are true, the Court ought to go into the Question of the Truth of those Imputations. On whom, then, is the Onus of Proof to lie? Surely on the Defamer who has asserted them. It is not for the defamed Man to show that he has been defamed, but having been spoken ill of, or his Feelings insulted, the Man who has assailed him should be made to show that what he has stated, being true, &c., is not calculated to injure the Character. But even here the Position assumed does not appear sound, for there are many Cases in which the Truth of a Fact by no means hinders the Statement of that Truth, in many Cases and Circumstances, being defamatory. The Course that Justice appears to point out is, that the Fact of Truth being primarily admitted, the First Question to be gone into is the *Object of the Publisher or Defamer*. Secondly, whether Society really will benefit by the Publication, and to what Extent. Thirdly, whether from private Enmity it is not very possible that, even supposing a Benefit, trifling perhaps to a Degree in itself to Society, might accrue, that still such Benefit may never be contemplated by the Defamer, but that, on the contrary, he intended to do the other Person as much Injury as possible. Fourthly, whether the Injury done, or likely to be done, was of such a Nature as to be of very injurious and great Consequence in its Results to the Individual defamed, when it was, at the same Time, of very trifling Consequence to Society, and hardly any Benefit could be said to be derived to any one from the Knowledge of it, or *vice versa*. Take, then, the Example above given. Suppose that A admits the Theft; that he, at the same Time, satisfies the Court that he has ever since been living a quiet, honest, upright Life; that he produces a Host of Witnesses to prove this; that he shows that the Theft was committed under very peculiar Circumstances of Hardship; that, though they could not justify, still they mitigated the Atrocity of it; that, previously to that, he had lived an honest Life; that for Years past B had been his inveterate Enemy, and it was principally owing to his Villany that he had been so reduced in Circumstances as to be induced to thieve for his Bread. Conceive all this to be incontrovertibly proved; can it be doubted that B was actuated by malicious Motives? that A's Character ran a very serious Risk of being injured, and his future Prospects ruined? that, being in a flourishing Trade, he might become Bankrupt, &c. &c.? that no Benefit could be done to Society by having the Information thrust upon them? and, in short,

that no End could be gained, but the diabolical and malicious One of B? Can there be a Doubt that B ought to be punished? Let us try another Case. A Lady of the First Education and Manners, surrounded by her Friends, is under Promise of Marriage, and, after a long Course of Deception and Villany, is seduced. Her Seducer, having gained his End, and, not immediately marrying her, according to his Promise, she indignantly leaves him, and ever after lives an irreproachable Life. That her Seducer does everything in his Power to entrap her; but, seeing nothing but Dishonour attending her joining him, she virtuously refuses. He becomes enraged, and commences publishing and circulating all kinds of bad Reports to ruin her, if possible, in the Estimation of her Friends, and of the World. A Man of this kind would find immediate Shelter under Clause 470; and what Redress could the unfortunate Woman have? Her Delicacy would revolt at the Publication of her Infamy, if the Question of Truth was gone into, and thus be prevented from seeking Redress; whereas, the Fact of her having been injured in Reputation is manifest. If the Object of the Defamer were inquired into, *prima facie*, and found to be inadequate or bad, the Truth or Falsehood of the Fact is of little Moment; but there are many Cases in which the Fact might be utterly false, and yet an Investigation of the Truth might render the Party infinitely ridiculous in the Face of the World, and subject him to Comments, and even give him a Name ever afterwards. Thus, "So and So is the Man who was libelled Five Years ago," and a long Case gone into as to whether there was any Truth in his keeping a Native Mistress. Rather than be made thus a Subject of Ridicule, a Man might, however much he was unjustly defamed, pocket the Insult, however galling, than enter a Court of Justice. If, then, when he had Truth on his Side, a Man would submit to be defamed rather than enter a Court, what would be his Feelings when he had actually done the Thing he was accused of having done. To have his Character for Probity or Honesty maliciously assailed and ruined, and be obliged to sit by in Silence and suffer, because the Law determines that Truth cannot be Libel (though in Fifty Cases out of a Hundred it is), would indeed be a hard Case. It is quite Time enough to inquire into the Truth of a Fact of this sort when the defamed Person demands it. If the Truth is admitted, no Inquiry regarding it is necessary. We should then proceed at once to the Publisher's Motive; if denied, and the Reasons adduced by the Defamer for his supposed libellous Conduct are so plausible, without going into the Proof of the Case, as to make the Proof of the Truth necessary, then let the Defamer prove what he can; but, in the first instance, he has no good Reason to urge to punish him, and leave the Truth alone, unless Proof of it be also demanded to enable the Plaintiff to come forth clear to the World.

Clause 478.—This Exception can easily be abused most grossly.

Clause 480.—Suppose the Printing here not to be purposely concealed, but that the Possessor is ignorant that defamatory Matter has been printed; to punish him would be unjust. It would perhaps be as well to put this also as an Exception.

Clause 481.—If One hundred defamatory Newspapers are sold, why should the Man who sells the First be punished and those who sell all the others escape?

See Page 99, Note R.—The Suggestion in the last Paragraph of this Page is very good, and is certainly entitled to the greatest Respect.

See Page 100.—The Example at the Top of this Page is not one likely to occur. What Gang of Sharpers would prosecute One of their Party for Defamation, knowing that he could prove them to be Villains of the blackest Dye. Illustrations which are to justify Legislation should at least be practical in their Nature.

See Page 103.—A Writer characterizing a public Functionary in general Terms as incapable, has either done that Functionary a most serious Harm or a Benefit. I cannot conceive a public Functionary being under the least Mistake as to whether he was benefited or harmed thereby; but I can easily imagine his excessive Indignation, and a manifest Desire to know why, without anything specific being brought against him, he should in general Terms be called incapable and published to the World as such. His First Anxiety would naturally be to ascertain in what Respect he had shown himself to be incapable; but injured as he is in Reputation as a public Officer, and thereby an almost incalculable Injury done him, the Law Commissioners, instead of doing the Justice to let him know how he has erred and requiring his Defamer to produce Proof, call on him to show Proof of bad Faith in his Defamer; as if the Fact of his having defamed him was not in itself sufficient Proof of bad Faith. No Writer, whether in good Faith or bad Faith, has any Business, except on the fairest and strongest Grounds, and then even at his own Peril, to publish defamatory Matter of another. The Effect of the present Law will be, that if the Newspaper Writers abuse the Law Commissioners, or any one else, as Pickpockets in "*good Faith*," they must take it all in *good Faith*, and submit. I cannot conceive a general Imputation that does not include specific Facts. Thus, if A publishes that B takes Bribes, it may be inferred that B has taken a Bribe at some Time and Place that is known to A; but if A should in general Terms say that B is incompetent to do his public Duty, would not the Inference be equally great that some specific Instance or Instances of Incompetency had been brought to A's Notice? If there had not, then must A be, by so much the more, a greater Scoundrel for maliciously and wantonly defaming another, at the most through mere Report, which could be no Justification, and surely ought to be punished. There may also be Cases where a Person would not be defamed by a Publication circulated in a particular Place; whereas the Circulation of the very same Report would be most highly so in

in another Country or Town. In writing the above Remarks, I have been guided by nothing but the small Share of Experience that I have gained in the Eight Zillahs in which I have held Appointments in Bengal and in the North-west Provinces, added to mere reading of the Bengal Code itself. To comment properly on a Book that has taken upwards of Five Years to compile, and where Doctrines at variance with previous Law are laid down, would require at least a Year or Two; and Positions that, by a specious Reasoning, appear strong, would, to show their weak Points, require a String of Arguments and a Length of Writing that would somewhat exceed those used in the Code. To attempt this effectually would be to write a Book somewhat larger than it is; and this Principle, if carried out by all Magistrates, would fill so many Volumes that it would take more Time to read than could or would ever be spared. I have already trespassed very considerably on Space, and being very certain that the Arguments of those of more Experience will hold a prior Place, as they are most assuredly entitled to do, I feel it unnecessary to add more. I have endeavoured to confine myself entirely to what is of a practical Nature in the Code, and have refrained from Argument except when the very anomalous Sort of Legislation appeared to call for Comment, as being opposed to the Interests of that Society in which I am destined to live and move.

The Remarks that I have offered on some of the Clauses may appear frivolous to others; but be it remembered that, till the whole of the Enactments of the Penal Code be all retained fully in the Memory, it is very possible that the Punishment in One Clause may appear trivial, whereas if the whole Train of Clauses that might be brought to bear upon any particular Crime could be recollected at the same Time, the Punishment, when added to those in the other Clauses, would appear severe. But only a practical Application can give a perfect Knowledge of the Bearing of all the Clauses, and on this account I am the more diffident in bringing forward Comments that may, in all Probability, tend to show that I was ignorant of Facts that more Study or Experience would have made me acquainted with.

I have, &c.
(Signed) E. H. C. MONCKTON.

H. C. TUCKER Esq. to H. B. HARRINGTON Esq.

(No. 367.)

Sir,

Azinghur, Magistrate's Office, 14th December 1838

IN reply to your Circular of the 24th March, I proceed to state my Opinions on the proposed Penal Code, premising, that a good Digest and Assimilation of the existing Law might have been better; and that the Language of the Code should have been so clearly and definitely framed as to have rendered "Explanations" and "Illustrations" unnecessary.

Clause 56.—I do not think that A should have the Power of altering his own Sentence and discharging it, at his own Pleasure, partly in Prison, and partly in Coin. This would introduce great Confusion, and render the Supervision of the Register of Warrants more difficult.

Clauses 58, 59, 60.—When Two Offences of the same Nature are committed at the same Time they ought to be conjointly punished as One Offence of an aggravated Nature; otherwise, under Illustration (b), in a Fray with Fifty Men, A might be imprisoned Fifty Years for striking and causing Hurt to each of them.

Clause 61.—Surely every one must be tried for a definite and specific Offence, and be liable to the Penalty of *that* Offence. There are often several Handles by which the same Offence may be taken up, but having selected your Handle, you should keep to it.

Clauses 62, 63, 68, 69, 70.—Illustration (d). The Officer might be tried, and probably punished, for indiscreetly ordering the Soldier to fire. I think there might be a graduated Scale of Punishments for Offences committed under different Degrees of bad Judgment. A being brought in Guilty of the Offence under the specific Degree of ill Judgment, would receive the diminished Penalty attached to it.

Ill Judgment might be classed under—

1. Defective Judgment, from being under Age, Idiocy, or being unconsciously drugged, &c.
2. Mistaken Judgment.
3. Careless Judgment.
4. Wilful Crime.

Offence.	No. 1.	No. 2.	No. 3.	No. 4.
Murder	Fine, slight Imprisonment, or to be sent to Insane Hospital.	Fine, Imprisonment for 1 Year.	Imprisonment from 1 to 7 Years.	Death.
Grievous Hurt	Slight Fine, slight Imprisonment, or to be sent to Insane Hospital.	Slight Fine and Imprisonment.	Fine and Imprisonment.	Full Penalty.

Clauses 68, 82.—It appears inconsistent to say that 68 is *not* an Offence, and yet in 82 to allow A to kill Z and be guiltless. Z, in both Cases, is Guilty of Attempt to murder, under Nos. 1 and 2, which justify A in resisting, and, if unavoidable for Self-defence, killing him; but he could not be justified in killing Z for doing nothing wrong.

Clause 91.—This is a worse Offence than 90, and should be punished more severely. The Punishment should also be partly regulated by the Relations between the Instigator and the Person instigated. Where the former is either the Husband, Parent, or Master of the latter, he should be liable to the full Penalty attached to the Offence instigated to. This Rule might also be extended to Landlords, Religious Teachers, &c.

Clauses 98, 99.—Perplexed and impracticable. We cannot judge of People's "Intentions" and "Misconceptions," or of what "they know to be likely."

Clause 106.—Does this include a Receiver of stolen Property melting down or otherwise "causing the Marks of stolen Property to disappear"? I think that the Clause would be more complete if the Words "with Intent to screen the Offender" were inserted.

Clauses 107, 178, 206.—The Exception should only extend to Husband and Wife; and the Penalty should, I think, in Cases where the Convict was sentenced for Felony, be a Quarter of the original Term of the escaped Convict's Sentence. The greater his Crime the greater the Offence of knowingly harbouring and concealing him.

Clause 142, 144.—Impracticable. How are you to prove the *knowingly* giving an unjust Order? Appeal, Civil Action for Damages, and Dismissal by Government are quite sufficient Checks, without subjecting "Judges" to be brought to Trial for Injustice by every disappointed Suitor.

Clauses 159, 160, 161.—A Provision of "toties quoties" should be inserted, till the Order is executed.

Clause 196.—Should not be confined to "Civil Suits," but extend to all false, fraudulent, or vexatious Complaints.

Clauses 186, 199.—Why should 199 be double 186, and not *vice versâ*.

Clauses 201, 203, 204.—The Power of imposing Fetters, or additional Fetters, and of reducing the absconding Prisoner's Allowances, should be given. Corporal Punishment is, I fear, beyond Hope, and few of the Gaols in this Country admit of solitary Confinement.

Notes, Page 40.—No one should be allowed to plead that an Order was "foolish" as his Reason for disobeying it. Until reversed on Appeal, the Order of every Public Servant should be binding, and be enforced. Officers should be warned against issuing vexatious Orders (under Liability to Suit for Damages in the Civil Court), and they might be prohibited from issuing any *General* Orders without the previous Sanction of the controlling Authority.

Clauses 223, 224.—A Stamp Washer, being more likely to be an habitual and professional Rogue, should be punished more severely than the mere User of a washed Stamp. This washing and using, being a Species of Fraud best adapted to the timid Character and small Means of Natives, should, I think, be punished as 220 and 222.

Clause 225.—This is much too severe in the present inefficient State of the Government Post Office. It will be Time enough for such an Enactment when Captain Taylor's Efforts to establish good District Daks upon Rowland Hill's Principle are successful.

Clauses 363, &c.—This is no Theft, but a criminal Trespass.

Clause 368.—The putting in *Fear* must be clear; the Injury sufficient to compel the Act, with reference to the Age, Sex, and Situation of the Person threatened; otherwise Complaints of Extortion will continually be brought forward. C and D are not sufficient. Extortion should, I think, be confined to Threats of *Personal* Injury, such as (a), for which no subsequent Civil Proceedings would afford an adequate Remedy.

I have, &c.

(Signed) H. C. TUCKER, Occasional Magistrate.

R. Low Esq. to H. B. HARRINGTON Esq.

(No. 388.)

Camp Leonee Jubulpore, Office of the Poona Adawlut Court,
16th December 1838.

Sir,

IN reply to your Letter No. 1,550 of the 27th ultimo, I have the Honour to inform you that I have not drawn out any Observations on the new Penal Code, from an Idea that no Opinions of mine on the Subject would be thought worthy of Attention.

I have, &c.

(Signed) R. Low, Principal Assistant to Commissioner.

H. ARMSTRONG Esq. to H. B. HARRINGTON Esq.

(No. 23.)

Futtehpoore, Magistrate's Office, Camp Sheorajpore,
19th December 1838.

Sir,

I HAVE the Honour to acknowledge the Receipt of your Letter No. 1,533 of the 27th ultimo. As the Court in their Circular of the 24th March last have left it optional to

pass

pass an Opinion in detail on the proposed Penal Code, I shall merely state that it does not appear to me to have any Advantages over the present Regulations, which are more simple, and in my Opinion preferable to the proposed Code.

I have, &c.

(Signed) H. ARMSTRONG, Magistrate.

Hon. Sir W. NORRIS to Hon. T. C. ROBERTSON, W. W. BIRD, W. CASEMENT, and
(No. 108.) A. AMOS, Esqrs.

Honourable Sirs,

Penang, 4th October 1839.

1. I do myself the Honour to acknowledge the Receipt of your Letter of the 12th August last, referring to the previous Communication of your Predecessors and the Copy of the proposed Penal Code for India therewith transmitted, and must apologize for the seeming Neglect on my Part, which has rendered necessary a Second Application for such Observations and Suggestions as my Experience might dictate, with regard to the important Subject to which the Work in question relates.

2. This apparent Remissness, however, would not have occurred but for frequent Indisposition,—the few Intervals of Leisure which, as sole Professional Judge in a Court performing Circuits and sitting throughout the Year, I am ever able to command, and lastly the Supposition that any Remarks of mine had been rendered superfluous by the Transmission of the Work in question to England, for the ultimate Approval or Rejection of the Home Authorities.

3. I have now only to add, that I shall have much Pleasure in complying with the Request which you have done me the Honour to make at as early a Period as my Health, my official Duties, and the Importance of the Subject itself will permit, although I fear that the Observations which, under such Circumstances, I may have to offer will be shorter and less satisfactory either to the Legislative Council or to myself than could be wished.

I have, &c.

(Signed) W. NORRIS.

No. 115.

(No. 109.)

MINUTE by the Honourable A. Amos.

21st October 1842.

HAVING returned a short Time ago various References concerning the Criminal Code, it may be useful to make a Memorandum on the Subject. The Papers remained with me till the Answers should be all sent in. Some important Answers never arrived. I may mention particularly that of the Lower Sudder of Bengal; nor did we ever receive an Answer from Sir E. Ryan. A Second Part of Sir J. Awdry's Answer was promised, but it never came. We received no Answers from any of the Advocate Generals, excepting the Advocate General of Madras, who altogether disapproved of the Code. From the Straits we received only an Excuse for an Answer.

However, possibly the Council might have been induced to dispense with some at least of the Answers that were expected, but for other Considerations. It is a very important Circumstance that the Definitions and Punishments of the Penal Code of England were under the Revision of a Commission sitting in England at the very Time a Penal Code was being prepared for India. The English Criminal Law Commissioners have, I believe, finished their Reports, and their Labours have no doubt undergone the Consideration of the English Authorities and the Legal Profession, and will, I presume, speedily be submitted to Parliament. Indeed the English Criminal Law had before the Report of the Indian Commissioners was finished undergone several important and extensive Modifications, both with regard to the Definitions and Punishment of Crimes. The English Statutes by which these Changes were effected have been extended to the Indian Presidency Towns, at the Desire of Her Majesty's Indian Judges. Had these Statutes been brought under the Consideration of the Indian Commissioners, it is probable that they might have materially modified their Code with reference to them, and even for the sake of Uniformity have conceded some Things which might be more consonant to their own Opinions. I need not dwell on the various and most important Advantages of keeping the Law in India identical, not only in Spirit but in Letter, with the Law of England, wherever the latter may not be inappropriate to the Circumstances of the Country. But a very considerable Part of the Penal Code prepared by the Indian Commissioners is not more peculiarly appropriate to India than to England.

Again, the Commissioners did not furnish us with a Statement of the Criminal Law of the Country as derived in a great measure from the Regulations, and in some respects from the Mahomedan Law. This they were required to do by the Charter Act; and in the Absence of such a Statement I must own I should feel reluctant blindly to make sweeping Changes, being satisfied from actual Observation in various Instances that but little Modification, and sometimes no Change at all, was requisite in the existing Provisions of the Law. In One of our Acts relating to the drilling of Coin, we adopted the Terms of the Mofussil Regulation, for the Purpose of applying it to the Presidency Towns, after much Consideration, in preference to the Code or the English Statut^e; for we deemed it important, in supplying Defects and attaining Uniformity, to avoid Change in a Case in which the Terms of the Regulations were sufficiently precise for all practical Purposes.

We have on various Occasions passed Acts upon the Matters which are the Subjects of the Provisions in the Code. On these Occasions we have attentively consulted the Code. In doing so I have always found that the Commissioners had given much Labour and much Reflection to the Questions before them. Nevertheless, from a View of the practical Suggestions and Remarks of the Mofussil Authorities, or from the Discussions in Council, it has generally been found that it would not be expedient implicitly to follow the Code. And as this has been the Case with regard to Questions that have arisen upon express References and Orders which the Course of Business obliged us to consider, it made me (as far as I was concerned) the more cautious of recommending generally the Adoption of a Multitude of Provisions not founded on any previous Law or System, and which we could not so attentively scrutinize. We have, moreover, been especially cautioned, in a Despatch received since my Arrival in India, against passing the Code prematurely, seeing that it was not based on Experience, and contained many Provisions that had never been tried by that Test. On One important Chapter of the Code, the Admission of Strangers into certain Parts of India, a Draft Act was framed; but Lord Auckland, whilst at Simla, refused his Assent. A Draft Act concerning Affrays, which is One of the Heads in the Code, has been published, and is under Consideration; as also a Draft concerning malicious Trespasses by Cattle, and One concerning Nuisances, upon which Subject we have also passed Legislative Enactments.

Many of the Authorities we have consulted say, very truly, that they cannot sufficiently judge of the Expediency of the Criminal Code of Definitions and Punishments until they see more clearly by whom and according to what Procedure the Law is to be administered. Though much has been done in our Legislative Acts and by the Law Commission upon the Subject of Procedure, and though the Police Committee have long ago made several important Suggestions, yet, partly owing to the State of the Finances and Troubles of the Country, and the Abstractions occasioned by political and military Emergencies, with the occasional Absence of the Governor-General, a great deal remains to be done before we can place on a satisfactory Basis our Criminal Courts and our Police. I may mention as Matters of great Importance which remain to be disposed of, the general Amenability of British Subjects to the Criminal Courts of the Mofussil, and the confiding of Criminal Powers to Native Judges. The Subjects, moreover, of Prison Discipline and Transportation have an important Bearing on the Code. On these Subjects, though much has been recommended by the Prison Discipline Committee, and approved of by Government, little has been practically effected.

Notwithstanding, however, the above Considerations, more, doubtless, of the Code, under necessary Modifications, would have been converted into Law if Government had, in the Communications it has received from the different Parts of India, found there was any urgent Call for it. In the few Cases where better Definitions of Offences, or a more expedient Provision of Punishment, has been found desirable, the Code has been consulted with Advantage; but such Cases have not been numerous; whilst our Attention has been very frequently and urgently called to Matters of Criminal Procedure and Police, and which on that Account seem to require our Attention in preference to the Code. I conceive that at all events *in the Absence of a Governor-General* it would be lost Time to canvass seriatim the Articles of the Code.

(Signed) A. Amos.

No. 116.

EXTRACT from the PROCEEDINGS of the Right Honourable the GOVERNOR GENERAL of INDIA in COUNCIL in the HOME DEPARTMENT (LEGISLATIVE), under Date the 26th April 1845.

(No. 354.) G. A. BUSHBY Esq. to the INDIAN LAW COMMISSIONERS.

Gentlemen,

Council Chamber, 26th April 1843.

THE Indian Law Commission submitted to the Government the Draft of the Penal Code in its revised and printed Form in October 1837. In February of the following Year Copies were sent to the Governments of the several Presidencies, and through them to the Sudder Courts and such subordinate Officers as they might think proper to consult. Those Governments were also requested to furnish Copies to any other public Officers or any Individuals whose Opinions they might consider valuable. Copies were likewise transmitted to the Judges of Her Majesty's Supreme Courts, to the Recorder of Penang, the Advocate General, and other Law Officers of the Company at the several Presidencies, and to several experienced Functionaries in different Parts of the Country, inviting their Opinions and Observations, with a view to render the Work as complete and free from Faults as possible.

2. The Returns which were received in reply to these Communications extend to the End of October 1840, and form a very large Collection. The Governor General in Council is desirous that some Step should be taken towards a Revision of the Code, with a view to its Adoption, with such Amendments as may be found necessary, or to its final Disposal otherwise. For this Purpose I have been instructed to refer to you for Examination all the Opinions received from the several Presidencies, as per enclosed List, and to direct your Attention to the "Act of Crimes and Punishments" contained in the Seventh Report of the Commissioners on the Criminal Law of England, with a view to Comparison, and the Detection of any Omissions or other Imperfections that may exist in the Code. With these Materials the Governor General in Council trusts that you will be enabled to frame such a Report as may assist the Government of India in forming a Judgment on the Merits of the Code at no distant Date.

I have, &c.

(Signed) G. A. BUSHBY,
Secretary to the Government of India.

Enclosure in No. 116.

LIST of LETTERS from the GOVERNMENT of INDIA to the LOCAL GOVERNMENTS and others, regarding the PENAL CODE.

FORT ST. GEORGE.

Letter No. 88, dated 12th February 1838.
From Officiating Secretary, Government, India, to Chief Secretary, Government, Fort St. George.

Transmits 150 Copies of the Penal Code for Consideration of the Madras Government, and Distribution in a Manner that may tend to useful Results. Remarks from public Officers or Individuals, in order to render the Case complete and free from Faults, will be thankfully received. The Sudder Foujdarry Adawlut should be called upon to collect and adjust Opinions from all such public Officers (subordinate to them) who may be deemed qualified to contribute to the Improvement of the Code, and to submit to the Legislative Council, through the local Government, the Returns that they may receive, with their own Observations. Opinions of the local Government requested as to the Native Language or Languages into which the Code ought to be translated for Distribution among the intelligent Part of the Native Community, as also to the Means available for a satisfactory Execution of the Translation.

Letter No. 319, dated 7th May 1838. From Officiating Secretary to the Government, India, to the Chief Secretary to Government of Fort St. George.

With Copy of Communication from Secretary to the Government of India with the Governor General regarding the proposed Penal Code.

Letter No. 439, dated 12th August 1839.
From Officiating Secretary, Government,
India, to Secretary, Government, Madras.

In consequence of a Despatch from the Honourable the Court of Directors on the Subject of the Penal Code, requesting that the Judges of the Sudder Foujdarry Adawlut may be called upon to submit their Observations and Suggestions, with any Returns received by them, in order that the Supreme Government may be assisted in the Review of the Work in question.

BOMBAY.

Letter No. 103, dated 12th February 1838.
From Officiating Secretary to Government,
India, to Chief Secretary, Government,
Bombay.

Transmits 100 Copies of the Penal Code for Consideration of the Bombay Government, and Distribution in a Manner that may tend to useful Results. Remarks from public Officers or Individuals, in order to render the Code complete and free from Faults, will be thankfully received. The Sudder Foujdarry Adawlut should be called upon to collect and digest Opinions from all such public Officers subordinate to them who may be deemed qualified to contribute to the Improvement of the Code, and to submit to the Legislative Council, through the local Government, the Returns that they may receive, with their own Observations. Opinion of the local Government requested as to the Native Language or Languages into which the Code ought to be translated for Distribution among the intelligent Part of the Native Community, as also to the Means available for a satisfactory Execution of the Translation.

Letter No. 320, dated 7th May 1838.
From Officiating Secretary, Government,
India, to Acting Chief Secretary, Government, Bombay.

With Copy of Communication from Secretary to the Government of India with the Governor General, regarding the proposed Penal Code.

Letter No. 442, dated 12th August 1839.
From Officiating Secretary, Government,
India, to Secretary, Government, Bombay.

Requesting the further Reports promised, in order that the Government may be assisted in the Review of the Penal Code by such Observations and Suggestions as they may contain.

BENGAL.

Letter No. 48, dated 12th February 1838.
From Officiating Secretary, Government,
India, to Secretary, Government, Bengal.

Transmits 200 Copies of the Penal Code for Consideration of the Bengal Government, and Distribution in a Manner that may tend to useful Results. Remarks from public Officers or Individuals, in order to render the Code complete and free from Faults, will be thankfully received. The Sudder Nizamut Adawlut should be called upon to collect and digest Opinions from all such public Officers subordinate to them who may be deemed qualified to contribute to the Improvement of the Code, and to submit to the Legislative Council, through the local Government, the Returns that they may receive, with their own Observations.

Letter No. 154, dated 7th May 1838.
From Officiating Secretary, Government,
India, to Officiating Secretary, Government,
Bengal.

With Copy of Communication from Secretary to Government of India with the Governor General, regarding the proposed Penal Code.

Letter, dated 12th August 1839. From Officiating Secretary, Government, India, to Secretary, Government, Bengal.

In consequence of a Despatch from the Honourable Court of Directors on the Subject of the Penal Code, requesting that the Judges of the Nizamut Adawlut may be called upon to submit their Observations and Suggestions, with any Returns received by them, in order that the Supreme Government may be assisted in the Review of the Work in question.

NORTH-WESTERN PROVINCES.

Letter 68, dated 12th February 1838. From Officiating Secretary to Government, India, to Officiating Secretary to Governor General of India for the N. W. Provinces.

Transmits 150 Copies of the Penal Code for Consideration and Distribution in a Manner that may tend to useful Results. Remarks from public Officers or Individuals, in order to render the Code complete and free from Faults, will be thankfully received. The Sudder Nizamut Adawlut should be called upon to collect and digest Opinions from all such public Officers subordinate to them who may be deemed qualified to contribute to the Improvement of the Code, and to submit to the Legislative Council, through the Local Government, the Returns that they may receive, with their own Observations.

Letter No. 321, dated 7th May 1838. From Officiating Secretary to Government, India, to Officiating Secretary to Governor General of India for the N. W. Provinces.

With Copy of Communication from Secretary to the Government of India with the Governor General regarding the proposed Penal Code.

Letter No. 440, dated 12th August 1839. From Officiating Secretary, Government, India, to Secretary, Government, N. W. Provinces.

In consequence of a Despatch from the Honourable Court of Directors on the Subject of the Penal Code, requesting that the Judges of the Nizamut Adawlut at Allahabad may be called upon to submit their Observations and Suggestions, with any Returns received by them, in order that the Supreme Government may be assisted in the Review of the Work in question.

GOVERNOR GENERAL.

Letter 176, dated 26th February 1838. From Officiating Secretary, Government, India, to Secretary, Government, India, with the Governor General.

It was not the Intention of the President in Council to intimate to the Court any Intention of instantly entering on a Discussion of the Draft of Penal Code without a previous Collection and Collation of Opinions of qualified Persons. Refers to Letter from this Department to Mr. Thomason, dated 12th instant, for the Steps taken for obtaining Materials to aid the Deliberations of the President in Council. Mentions the particular Functionaries who have been addressed on the Subject, and appends Copy of Letter to the Judges of the Supreme Courts at the different Presidencies. Explains the Impression under which the Communication to the Court of Directors referred to was made. Requests the Opinion of his Lordship whether any more particular Means should be used to elicit the Sentiments of any public Authorities.

JUDGES.

Letters Nos. 41 and 42, 58 and 59, 56 and 57, and 60, dated 12th February. From Government of India to each of the Judges of the Supreme Courts of Bengal, Madras, and Bombay, and the Recorder of Penang.

With a Copy of the Penal Code to each of the Judges of the Supreme Courts of the Three Presidencies, and to the Recorder of Penang, for Observations and Suggestions for supplying any Defects in the Work which may occur to them.

Letters, dated 12th February. From the Officiating Secretary, Government, India, to the Advocate Generals, Standing Counsels, and the Company's Attorneys at each of the Presidencies of Bengal, Madras, and Bombay.

With a Copy of the Penal Code, for Observations and Suggestions for supplying any Defects in the Work which may occur to them.

Letter, dated 12th August 1839, No. 445. From the Government of India to Chief Justice, Supreme Court, Bombay.

In consequence of a recent Despatch from the Honourable Court of Directors on the Subject of the Penal Code, request the further Communication promised in Letter dated 3d June 1838, to assist the Government in the Review of that Work which must be soon commenced upon, by such further

Observations and Suggestions as may be dictated by his intimate Acquaintance with the important Subject to which that Work relates.

Ditto, ditto.

Letters, dated 12th August 1839. From the Government of India to the Judges of the Supreme Courts at Fort William and Madras, and to the Recorder of Penang.

Letters No. 346, dated 12th August 1839. From Government of India to the Hon. Sir H. Seton, Kt., Puisne Justice of the Supreme Court at Calcutta.

Letters Nos. 340 and 341, dated 12th August 1839. From Officiating Secretary, Government, India, to Advocates General at Calcutta and at Bombay.

Ditto, ditto.

In consequence of a Despatch from the Honourable the Court of Directors on the Subject of the Penal Code, requesting, in order that the Government may be assisted in the Review of the Work in question, such Observations and Suggestions as may be dictated by their intimate Acquaintance with the important Subject to which that Work relates.

INDIVIDUALS.

Letter No. 30, dated 12th February 1838. From Officiating Secretary to the Government of India to the Honourable Sir Charles Metcalfe, Bart., G.C.B.

Letters, dated 2d September 1839. From Officiating Secretary, Government, India, to W. H. Macnaghten, Esq., H. T. Prinsep, Esq., General Fraser, Major Sleeman, and Colonel Sutherland.

With a Copy of the Penal Code, for any Observations with which he may be disposed to favour the Government of India.

In consequence of a Despatch from the Honourable Court of Directors on the Subject of the Penal Code, the Attention of the several local Governments was recalled to Letters of 12th February 1838, requesting that Copies of the Work may be distributed. It is feared that Officers not under the Orders of local Governments may not have been furnished with Copies of the Code, nor asked to comment on it; and being of opinion that the Government must derive material Assistance from their Suggestions and Observations in reviewing that Work, requests to be favoured with the same.

FORT ST. GEORGE.

Letter No. 76/290, dated 7th April 1840. From Chief Secretary, Fort St. George, to Secretary, Government of India.

Letter 445/727, dated 10th September 1840. From Chief Secretary, Fort St. George, to Secretary, Government, India.

Letter, dated 9th July 1838. From G. Norton, Advocate General, Fort St. George, to Secretary, Government, Legislative Department.

Letter No. 472, dated 13th August 1838. From Secretary, Government, India, to Advocate General, Madras.

Letter, dated 28th October 1840. From Sir E. J. Gambier, Judge, Fort St. George, to Government of India.

Letter, dated 14th September 1839. From Sir R. Comyn, Chief Justice, Fort St. George, to Government of India.

Letter, dated 11th November 1839. From Sir R. Comyn, Chief Justice, Fort St. George, to Government of India.

With reference to Correspondence quoted, forwards Letter from Registrar Foujdarry Adawlut, enclosing Opinions of the Second and Third Judges of that Court, the Opinions of the subordinate Authorities in the Provinces, and a Digest thereof, on the Draft Penal Code. Also Letters from Court of Commissioners for Small Debts, the Acting Chief Magistrate, and Superintendent of Police. (10 Enclosures.)

In continuation of foregoing Letter of 7th April 1840, forwards Extract from Proceedings, Board of Revenue, containing their Opinion of the Penal Code. (1 Enclosure.)

In reply to Order of 12th February 1838, communicates Observations on the Penal Code.

Communicating the Thanks of the President in Council for his Remarks.

In reply to Letter of 12th August 1839, communicates his Sentiments on the Code.

In reply to Letter of 12th August, forwards Observations on the Penal Code.

His Observations on the proposed Penal Code.

Copies, Letter No. 7, dated 4th January 1839. From Chief Secretary, Fort St. George, to Officiating Secretary, Government, India.

Forwarding Extract Proceedings Foujdarry Adawlut and other Papers regarding false Weights and Measures, for the Consideration of the Law Commission.

BOMBAY.

Letter, dated 13th April 1838. From Sir H. A. D. Compton, Bombay, to Government of India.

Letter No. 311, dated 30th April 1838. From Government of India to Sir H. Compton.

Letter, dated 9th June 1838. From Sir H. Compton to Government of India.

Letter No. 432, dated 2d July 1838. From Government of India to Sir H. Compton.

Letter, dated 2d June 1838. From Sir J. Awdry to Government of India.

Letter No. 429, dated 2d July 1838. Government of India to Sir J. Awdry.

Letter No. 1,567, dated 10th June 1839. From Secretary, Government, Bombay, to Secretary, Government, India.

Letter No. 2,987, dated 15th November 1839. From Acting Secretary, Government, Bombay, to Officiating Secretary, Government, India.

In reply to Letter of 12th February, making a few Observations on the Penal Code, and apologizing from Want of Leisure to do more.

Requesting him to favour Government with his Opinion at Length.

In reply to foregoing of 30th April forwards his Opinions on the Provisions of the Code. (1 Enclosure.)

Acknowledge foregoing Letter.

His Opinions on the proposed Penal Code.

Acknowledge, with Thanks, the foregoing Communication.

With reference to Letter of 10th November last, forwards Letter, Registrar, Sudder Foujdarry Adawlut, and encloses Minutes of the Judges of the Court and Reports of subordinate Authorities. Such as have not replied have been urged to do so as early as possible. (1 Enclosure.)

With reference to Orders of 12th August last, forwards Letter from Acting Registrar, Sudder Foujdarry Adawlut, and enclosed Reports from Magistrates of Rutnagherry and Acting Joint Magistrate of Broach on Penal Code. (1 Enclosure.)

BENGAL.

Letter No. 1,116, dated 5th June 1838. From Secretary, Government, Bengal, to Officiating Secretary, Government, India.

Letter, dated 9th July 1838. From J. Cochrane, Standing Counsel, to Officiating Secretary, Government of India.

Letter No. 247, dated 23d July 1838. From Officiating Secretary, Government, India, to J. Cochrane, Esq.

Letter, dated 28th September 1839. From Sir J. P. Grant to Officiating Secretary, Government, India.

Draft Note by A. Amos, Esq.

Letter No. 433, dated 14th October 1839. From Officiating Secretary, Government, India, to Sir J. P. Grant.

Letter, dated 22d October 1839. From Sir H. W. Seton to Secretary, Government of India.

Letter, dated . . . From Reverend W. Morton, M.L.M.S., to Secretary, Government of India.

Letter No. 123, dated 2d April 1838. From Officiating Secretary, Government, India, to Reverend W. Morton,

Letter, dated 8th November 1838. From J. Reily, P.S.A., Dacca, to A. Amos, Esq.

Letter No. 10, dated 18th February 1840. From Major Sleeman to Secretary, Government.

Letter No. 11, dated 19th February 1840. From same to same.

Letter No. 16, dated 6th March 1840. From same to same

With a Letter and Enclosures from Registrar, Sudder Nizamut Adawlut, regarding Punishment to Prisoners who incapacitate themselves for Labour. (1 Enclosure.)

Forwarding Remarks on the Penal Code. (1 Enclosure.)

Thanking him for his Remarks.

Forwarding his Opinion on the Penal Code. (1 Enclosure.)

To Sir J. P. Grant.

In reply to foregoing Letter.

In reply to Letter of 12th August 1839, communicates his Remarks on the Penal Code.

Forwarding the Remarks of several Missionaries on the Penal Code. (1 Enclosure.)

In reply to foregoing Letter, will take the Remarks of the Missionaries into consideration.

Forwarding his Observations on the Penal Code. (1 Enclosure.)

Returns Copy of the Penal Code, with his Notes, and submits Remarks. (1 Enclosure.)

Requests the Addition of some Remarks to foregoing Letter of 18th February.

Ditto ditto ditto.

Letter No. 188, dated 9th March 1840. With Extracts from foregoing Letter by
From Secretary, India, to Secretary, Indian Major Sleeman.
Law Commission.

PENANG.

Letter dated 4th October 1839. From In reply to Letter of 12th August 1839.
W. Norton, Recorder, to Secretary of India. promises his Remarks on the Code.

N.W. PROVINCES.

Letter, dated No. 2,271, 14th September 1839. From Secretary Governor General for N.W. Provinces, to Officiating Secretary, Government, India.

Note by A. Amos, Esq.

Letter No. 538, dated 14th October 1839. From Officiating Secretary, Government, India, to Secretary Governor General for N.W. Provinces.

Letter No. 539, dated 14th October 1839. From Officiating Secretary, Government of India, to C. W. Fagan, Esq.

Letter No. 2,658, dated 24th October 1839. From Secretary, Governor General for N. W. Provinces, to Officiating Secretary, Government of India.

Letter, dated No. 2,781, 15th November 1839. From Secretary, Government for N.W. Provinces, to Officiating Secretary, Government, India.

Letter No. 650, dated 24th February 1840. From Officiating Secretary, Lieutenant Governor, N.W. Provinces, to Secretary, Government of India.

Acknowledges Letter of 12th August 1839, and forwards Mr. C. W. Fagan's Letter and Observations on the Penal Code. (1 Enclosure.)

Mr. Fagan deserves the Thanks of Government.

Acknowledges Letter of 14th September 1839. The N. W. Provinces Government should call for the Opinions of Individuals on the Code. Names some.

Returning Thanks for his Remarks on the Code.

With reference to Orders of 12th August 1839, forwarding Correspondence with the Officiating Registrar, Nizamut Adawlut, N. W. Provinces. The Court have received the Opinions of some Officers; promise their own, and suggest that Mr. Turnbull (Judge on Leave) be called on for an Opinion. The Government object to making any official Call on Mr. Turnbull.

In reply to Letter of 14th October. Mr. R. M. Bird has been called on for his Opinion as regards Mr. Turnbull. Refers to foregoing Letter of 24th October 1839.

With reference to Mr. Currie's Letter of 24th October last, forwards Letter from Officiating Registrar, Nizamut Adawlut, containing the Opinion of the Court on the Penal Code, and forwarding the Opinion of Commissioners, Judges, and Magistrates. (3 Enclosures.)

GOVERNOR GENERAL.

Letter, dated 12th February 1838. From Secretary to the Government, India, with the Governor General, to Officiating Secretary, Government, India.

Letter, dated 13th April 1838. From Secretary to Government, India, with the Governor General, to Officiating Secretary, Government, India.

In reply to Letter of the 11th ult., communicating the Sentiments of the Governor General relative to the Draft of the Penal Code.

In reply to Letter of the 20th February last, states that it will be expedient to consult the Judges of the Sudder Courts at each of the Presidencies, and at Allahabad, on the Provisions of the proposed Penal Code.

No. 117.

The INDIAN LAW COMMISSIONERS to G. A. BUSHBY Esq.

Sir,

Indian Law Commission Office, 10th August 1846.

Received
3th May 1845.
dated 23d July
1846.
chap. 18, 19.

WITH reference to your Letter dated the 26th April 1845, we have the Honour to state, for the Information of the Honourable the President in Council, that we have completed a Report upon the Penal Code, embracing the Chapters of greatest Importance, namely, those treating of "Offences affecting the Human Body," and of "Offences against Property," and the Chapters containing Definitions and Provisions governing the whole Code, viz., Chapter I. of "General Explanations," Chapter III. of "General Exceptions," and Chapter IV. of "Abetment."

The whole No. of
Clauses is 488.

These Chapters comprise 233 Clauses, and our Review, in the course of which we examine the Criticisms contained in the voluminous Reports referred to us with your Letter, and compare the proposed Definitions and Rules with the

the Digest of the English Criminal Law in the Seventh Report of Her Majesty's Commissioners, necessarily extends to a considerable Length,

The Report has been transcribed, and is ready to be transmitted to you; but it appears to us that it will be more convenient to lay it before Government in Print than in Manuscript. This is the Course that was taken with the Penal Code itself, the Report on Slavery, and others; and if it is approved by the Honourable the President in Council on this present Occasion, we request Permission to send the Report to the Press at once.

We have, &c.
(Signed) C. H. CAMERON,
D. ELLIOTT.

No. 118.

G. A. BUSHBY Esq. to the INDIAN LAW COMMISSION.

(No. 551.)

Gentlemen,

Council Chamber, 15th August 1846.

I AM directed to acknowledge the Receipt of your Letter dated the 10th instant, and in reply to state, that the President in Council authorizes you to have your Report upon the Penal Code printed before submitting it to Government, and that the same Number of Copies should be obtained as of the Penal Code, viz., 1,000, of which Three Fourths may be printed on Serampore Paper.

I have, &c.
(Signed) G. A. BUSHBY,
Secretary to the Government of India.

No. 119.

THE CHIEF SECRETARY TO THE GOVERNMENT OF BOMBAY to G. A. BUSHBY Esq.

(No. 73.)

Sir,

Bombay Castle, 4th November 1846.

I AM directed by the Honourable the Governor in Council to transmit to you, for the Consideration of the Honourable the President in Council, and, if it should be thought necessary, of that of the Law Commission, Copy of a Letter from the Registrar of the Sudder Foujdaree Adawlut, dated the 6th ultimo, No. 2,478, and of its Enclosures, being the Proceedings held before the Session Judge of Poona in the Trial of Two Prisoners named Rungya bin Limbajee and Mhalya bin Ragho, together with Extracts from the Proceedings of the Sudder Court of Adawlut, as to its Authority to remit to the trying Authority a Case referred for its Confirmation, in order that further Evidence may be taken for the Prosecution when such Procedure appears necessary for the Ends of Justice.

2. I am at the same Time desired to forward Copies of the Minutes noted in the Margin.

I have, &c.
(Signed) R. K. PRINGLE,
Chief Secretary to Government.

By the Honourable Governor, dated 14th October.
By the Honourable Mr. Willoughby dated 15th October.
By the Honourable Mr. Blane, date 17th October.

Enclosure in No. 119.

(No. 2,471.)

W. H. HARRISON Esq. to the SECRETARY TO THE GOVERNMENT OF BOMBAY.

Sir,

Bombay, 6th October 1846.

I AM directed by the Judges of the Sudder Foujdaree Adawlut to forward, for the Purpose of being laid before the Honourable the Governor in Council, a Letter from the Session Judge of Poonah, dated 17th July 1846, with the whole of the Papers and Proceedings held in the Case of Rungya bin Limbajee and Mhalya bin Ragho, No. 29. of the Poona Calendar for 1846, together with an Extract from this Court's Proceedings of the 27th July, 3d and 26th August, and 12th September 1846.

I am further desired to request that the Letters, Papers, and Proceedings of the Session Judge above alluded to may be returned when no longer required.

I have, &c.
(Signed) W. H. HARRISON, Registrar.

EXTRACT from the PROCEEDINGS of the SUDDER FOUDARRE ADAWLUT, dated the 17th July, 3d and 26th August, and 12th September 1846.

essrs. Hutt and
Grant.
No. 80.
ungya bin
mbajee and
halya bin Ragho.

Read a Letter from the Session Judge of Poonah, dated the 17th July 1846, forwarding, for the Confirmation of the Court, a Counterpart of his Proceedings held in Case No. 29 of the Poonah Calendar for 1846, wherein the Prisoners Rungya bin Limbajee and Mhalya bin Ragho were convicted before him of a Gang Robbery by Night, with Force, and sentenced to be transported beyond Seas for the Term of their natural Lives.

Under Consideration.

esolution.

Read a Register of Petitions handed up by the Session Judge of Poonah on the 21st July 1846, forwarding Two Petitions from the above-named Prisoners, praying that the Sentences passed against them may be annulled.

Under Consideration.

3d August 1846.

esolution.
essrs. Hutt and
Grant.
No. 80.
ungya bin Lim-
jee and another.

Resumed Consideration of the Letter from the Session Judge of Poonah, dated the 17th July 1846, forwarding Case of the Prisoners Rungya bin Limbajee and Mhalya bin Ragho, last before the Court on the 27th July 1846.

MINUTE recorded by B. HUTT Esq., Puisne Judge.

The Conviction appears to be borne out by the Evidence, although the loose Way in which the Trial has been conducted gives rise to much Doubt and Difficulty. The First Witness, Kyroo, now says he heard the Robbers when at his House name the Two Prisoners tried in this Case, yet he made no Mention of this when examined at the former Trial, and, strange to say, though tried before the same Judge, no Attempt seems to have been made to clear up this apparent Discrepancy. It is possible he may now be speaking Truth, and that he could have explained why he did not declare it before; but the Neglect of this very important Inquiry leaves a Doubt which must in some Degree detract from the Value of his Evidence. The Second Witness, Bappoo, has clearly contradicted himself in his Two Depositions; for at the former Trial he declared that he recognized no other Robber, and yet he now swears positively to these Prisoners as Two of them. It is most extraordinary that no Notice should have been taken of this by the Session Judge, and that his Evidence should have been rested on as good. The Police Peon, however, sent out to apprehend the Prisoners, declare positively to their having confessed to being of the Gang, and One of them being also wounded, which agrees so well with the Evidence in the First Case. I must consider the Conviction correct, although it will be proper to point out to the Session Judge the Errors here noticed.

I should have been disposed to consider that a sufficient Example had been made in the other Case by the Transportation of Two Persons for this Crime, and that a Period of Imprisonment might have sufficed here, did it not appear from the Conduct of the Prisoner Rungya, in attempting to discharge a Pistol at those who apprehended him, that they are really, as described by the Session Judge, very desperate Characters, and on this Account I would confirm the Sentence of Transportation also.

(Signed) B. HUTT.

MINUTE recorded by G. GRANT Esq., Acting Puisne Judge.

The Proceedings in this Case do anything but Credit, in my Opinion, to the trying Authority.

The Three First Witnesses depose to having seen both Prisoners on the Night of and engaged in the Robbery; and, notwithstanding that they admit that the Gang had their Faces tied up, and that the Night was not a Moonlight One, they swear positively to the Identity of the Accused. One Witness, indeed, remembers having heard both Prisoners, out of a Gang of some Sixteen, called aloud to specially by Name.

No single Question is put by the Judge to elucidate this very unsatisfactory Evidence. Not One of these Witnesses is asked whether he had any previous Acquaintance with the Accused, that he is able to speak to their Identity under such very improbable Circumstances; nor whether he was examined on the former Trial of some Individuals of the Gang, or whether he had at any Time mentioned the Particulars now stated. On referring to the former Case, I find that these Witnesses, although they gave a most minute and detailed Account of all that had occurred, do not say One Word of the Two Prisoners, nor of the Circumstances connected with them, to which they now so positively swear. They all stated whom they had recognized, and One of them states that he cannot depose positively to any other Robber.

Witness No. 4 deposes to having been sent by the Foujdar to apprehend One Prisoner, No. 1, Ramya, in regard to whom the Foujdar had obtained Information; that Ramya, when apprehended, and brought before the Police Authorities, said he had not been alone, and then gave up the Name of the Prisoner, No. 2, Mhalya, as an Accomplice, having been actuated to do so by the Circumstances of Mhalya's Brother being One of the Party who apprehended him.

It must be borne in mind that Witness No. 1 deposes distinctly to having heard both Rumya and Mhalya called out to by Name.

Witness

Witness No. 5, who was sent with No. 4, deposes to the Foujdar having in the first instance ordered the Apprehension of both Ramya and Mhalya, thereby, if his Testimony is true, entirely vitiating the Evidence of No. 4.

Witness No. 6 deposes, in the First Part of his Evidence, to having been ordered by the Foujdar in the first instance to apprehend both Prisoners, but afterwards states that when Rungha was taken and brought to Dijree, he said that his Associates had gone off to a great Distance, but that one "Mhalya" had received a Wound, and that then they searched for Mhalya.

The Record does not show that any Attempt was made by the trying Authority to have these gross Discrepancies cleared up; they are not even noticed, nor are the violent Improbabilities deposed to by the Three First Witnesses.

I would annul the Conviction, and discharge the Prisoners, communicating the above Remarks to the Session Judge.

(Signed) G. GRANT.

Under Consideration.

Referred to a Third Judge.

Resumed Consideration of the Petition of the above-named Prisoners last before the Resolution. Court on the 27th July 1846.

Under Consideration.

26th August 1846.

Resumed Consideration of the Letter from the Session Judge of Poonah, dated the 17th July 1846, forwarding Case of the Prisoners Rungia bin Limbajee and Mhalya bin Ragho, last before the Court on the 3d August 1846.

Messrs Hutt, & Geyt, and Gra No. 80. Rungia bin Limbajee and Mhalya bin Ra

MINUTE recorded by P. W. LE GEYT Esquire, Puisne Judge.

I think the Evidence of Identification of the Prisoners given by the Witnesses Khyroo and other Servants not to be trusted, in reference to what the same Prisoners deposed to on the former Trial. Putting this aside, there is but very little against the Prisoners. The Admission by them, sworn to by the Policemen, is very weak. If the former Prisoners are not yet gone, I should be inclined to take the Evidence of Succaram as a Witness. (He is not gone.)

(Signed) P. W. LE GEYT.

MINUTE recorded by B. HUTT Esquire, Puisne Judge.

I hold that this Court, has no Power to re-open this Case, and take further Evidence, as proposed by Mr. Le Geyt under Clause 3, Section XXXVIII. Regulation XIII. of 1827. The Session Judge can only call on the Prisoners to enter on their Defence when the Prosecution is completed. In so calling on them for their Defence, then, he gives them a solemn Assurance that the Case for the Prosecution is at an end; and as the Session Judge has done this, we cannot now take further Evidence, and that the Prisoners must be acquitted or convicted on the Case as it stands. My Sentiments are so fully recorded in other Cases that I shall not go further into the Question here than to observe that, although such may have been done before the Law being so directly opposed to such a Breach of Faith, it ought to be so no longer.

(Signed) B. HUTT.

MINUTE recorded by G. GRANT Esquire, Acting Puisne Judge.

I object to the Case being re-opened, and further Evidence taken, as proposed by Mr. Le Geyt.

(Signed) G. GRANT.

FURTHER MINUTE recorded by P. W. LE GEYT Esq., Puisne Judge.

As the Proposition of taking further Evidence is rejected on a Point of Law which I entirely dissent from, and as I consider the Procedure now adopted by this Court contrary to the Construction which by long-established Practice has been put on the Law, defining the Power of the Sudder Foujdaree Adawlut to direct further Evidence to be received in Cases coming before it for Confirmation, I would propose that further Consideration of this Case be adjourned, and that the Question of taking further Evidence or not should be brought before a Court of Four Judges, on the Grounds that it will be an Interpretation of the Law (Clause 3, Section 29, Regulation XIII. of 1827) which it has been ruled should only be passed by Three concurrent Votes.

(Signed) P. W. LE GEYT.

To be referred to the Chief Judge.

Resolution.

Resumed Consideration of the Two Petitions from the above-named Prisoners last before the Court on the 3d August 1846.

Under Consideration.

Resolution.

12th September 1846.

Present.
Hon. J. P. Willoughby,
B. Hutt,
P. W. Le Geyt, and
J. Grant,
Squires.

Resumed Consideration of the Letter from the Session Judge of Poonah, dated 17th July 1846, forwarding Case of the Prisoners Rungya bin Limbajee and Mhalya bin Ragho last before the Court on the 26th August 1846.

MINUTE recorded by Hon. J. P. WILLOUGHBY Esq., Officiating Chief Judge.

The Question submitted for my Opinion is, whether, in Cases referred to the Sudder Foujdaree Adawlut, under Section 13, Clause 2, Regulation XIII. of 1827, the Court has Power to refer back the Case to the Zillah Court for further Evidence.

2. In treating of this Question, I propose, first, to recapitulate in Substance those Parts of Regulation XIII. which either directly or indirectly bear on the Point at issue; second, to state what I find to have been the established Practice of the Court ever since the Code of 1827 became Law; and, third, the Course which I think the Court should now adopt.

3. On the First Head I would remark, that the only Clause of Regulation XIII. which throws any Light on the proper Course to be pursued by the Sudder Foujdaree Adawlut in Cases which the Law requires to be submitted for their Review and Confirmation is Section 13, Clause 2. This empowers the Sudder Court "to confirm, mitigate, or annul" all Sentences passed by a Criminal Judge exceeding Two Years Imprisonment. There is no distinct Declaration of the Mode of Procedure; but certainly this Clause, taken separately, does not expressly confer on the Superior Court the Power of calling for Evidence additional to that recorded on the Proceedings of the original Trial. By Section 16, Clause 2, a Judge on Circuit is empowered to examine and investigate Cases tried in the Criminal Judges and Zilla Magistrates Departments, and to forward Cases, if necessary, to the Sudder Foujdaree Adawlut, for revised Decision, under Section 29, Clause 4. Here no Restriction is imposed, and it seems to me not intended to confine the Judge on Circuit to the Evidence recorded on the original Trial, but that the Expression "examine and investigate" must be construed to convey Authority to seek for fresh Evidence when such is deemed necessary. Hence I would deduce, that if such a Power is vested in a single Judge of the Sudder Foujdaree Adawlut on Circuit, Consistency requires that similar Power should be conferred on the Court in their collective Capacity, when reviewing the Cases so brought forward by the Criminal Judges. There can at all events be no Doubt that this Course is admissible in Cases of the Description mentioned in Section 22, Clause 2, referred to the Sudder Court by a Judge on Circuit before Sentence has been passed. By Section 17, Clause 2, the Sudder Foujdaree Adawlut is empowered "to revise Trials, and investigate Matters referred to it, according to Regulations, and pass final Sentence or Order thereon." This seems to me to be a slight Corroboration of an affirmative Interpretation of the Point at issue. Section 29, Clause 3, empowers the Sudder Foujdaree Adawlut "to cause the Criminal Judges, or the Zilla Magistrates, to take such Evidence or make such Inquiries on any Subject before it as may be desired, and to serve and enforce any Summons which it may issue for the Attendance before the Court of any Person to give Evidence in Matter within its Cognizance." I have no Doubt that the Practice as I find it to exist has originated under this Section. It would be difficult to deny that it does not admit of the Interpretation which has been put upon it. On the other hand, however, it might be argued, that this Section was not intended in any way to define the Power of the Sudder Court to take Evidence in any particular Case or Stage of a Case, but was probably meant as directory to the Criminal Judge to take the Evidence required, leaving the Question untouched as to the Limits within which the Court may require Evidence. Section 30, Clause 1, authorizes the Sudder Foujdaree Adawlut "to delegate the Investigation of any Matter within its Cognizance to a Judge on Circuit, and to depute him to take any specified Evidence." Clause 5 of the same Section authorizes the Court to examine and conduct Investigations on all Orders whatever passed by a Judge on Circuit. I doubt if the Power of Delegation here granted can be held to extend to Cases where the Sudder Court is sitting in Judgment as a Court of Review or Appeal. The Power, however, conferred by Clause 5 is most extensive, and apparently includes Cases when the Judge on Circuit had passed Sentence which could not be carried into execution without the Confirmation of the Court. Section 31, Clause 1, empowers the Sudder Foujdaree Adawlut to recommend Cases to Government for Mitigation or Annulment. Here, when the Sudder Court is not acting judicially in Appeal, it can scarcely admit of Question that it is entitled to obtain any Evidence within its Reach, though no such Power is directly conferred, to enable it to form an Opinion whether the Case is One to be recommended to Government for merciful Consideration. Section 38, Clause 3, prescribes that the Prisoner shall always be called on for his Defence *after the Evidence for the Prosecution has been completed*. This interpreted literally is decidedly opposed to the Reception of new Evidence by the Sudder Court; and it seems to me that the Right of a Prisoner to object to Evidence being received after his Defence had been closed could scarcely under this Clause be resisted.

4. The above Summary contains, I believe, all the Provisions of the existing Law which bear either directly or indirectly on the Point at issue. They are not sufficiently precise and explicit, and scarcely consistent; thus furnishing Arguments on both Sides of the Question; and had we not Practice to guide us I should very probably have come to the

the Conclusion, that, to preserve Consistency in the different Clauses, it should be held, that in all Cases when the Sudder Court is sitting as a Court of Control and Superintendence, or to recommend a Case for the merciful Consideration of Government, it is empowered to require any Evidence to be taken which it may deem necessary ; when, however, it is sitting as a Court of Review or Appeal from the Decision of an inferior Court, including Cases when the Sentences passed by an inferior Court require, before Execution, the Sanction and Confirmation of the Sudder Court, it should be confined to the Evidence on which the original Sentence was passed.

5. I shall now proceed to the Second Head, and state what has been the established Practice of the Sudder Court of this Presidency ever since the Code of 1827 became Law. I would here premise, that, although opposed to English Law, the Principle of receiving fresh Evidence by the Sudder Court in Cases referred to it by an inferior Court has always been recognized and acted on in India. In short, I believe it is recognized by the existing Law both at Calcutta and Madras. At the latter Presidency the Sudder Foujdaree Adawlut is expressly empowered, in referred Cases, to require further Evidence, if they see Occasion, or to pass such final Sentence as may appear consonant to Justice and conformable to Mahomedan Law, with the Exceptions and Modifications authorized by the Regulations. Vide Section 11., Regulation VIII., of 1802, compiled by Cambell, Page 136, Vol. I. I am unable to quote the precise Enactment in force at Calcutta. The Nizamut Adawlut, or Superior Criminal Court, under the Bengal Presidency, is chiefly founded on Regulation IX. of 1793, Sections 66 to 78. The Court, by Section 73, is vested with all the Powers that were vested in it whilst it was stationed at Moorshedabad, and superintended by the late Naib Nazim, the Nabab Mahomed Rezu Khan. I have not been able to ascertain what these Powers were ; but I have no Doubt it included that of requiring in referred Cases fresh Evidence, for I find among the Reports of Cases determined by the Court of Nizamut Adawlut, compiled by the late Sir William Macnaghten, Vol. I., Page 245, an Instance proving what was the Practice of the Court in 1812. The Case was One of Robbery and Murder, and from the Report it appears that the Court acted as follows :—

The Law Officer of the Nizamut Adawlut being of opinion that from the Terms of the Confessions of the Prisoners it was uncertain whether they had been present at the Attack or not, declared in their *Futuwa* that a Sentence of Capital Punishment could not be awarded, but that the Prisoners were liable to discretionary Punishment by Tuzeer. The Court, with the View to remove the Uncertainty alluded to, directed that fresh Evidence should be taken as to the following Points ; viz., whether the Prisoners fell into the Well in proceeding to or returning from the House of Hoolapee ? Whether any of the Witnesses saw the Prisoners or either of them fall into the Well ? By what Means they were discovered, and at what Time ? What Conversation took place with them when they were brought out ? The Distance from the Well to the House of the Deceased ? And whether either of the Prisoners was seen running away with the other Robbers ? It appearing that the Body of Hoolapee was interred without any Inquest being held on it as required by the Regulations, the Court desired that sufficient Number of Persons who saw the Deceased before his Death should be examined respecting the Cause of it, and the Nature of his Wounds. The Judge on Circuit was directed to obtain Evidence as above ; and on the Receipt of his Proceedings the Prisoners were sentenced by the Nizamut Adawlut to suffer Death. Finally, it may be observed, that there can be no Doubt that up to the Date of the Promulgation of the Code of 1827, a similar Practice was sanctioned by Law under this Presidency. Section 52, Regulation V. of 1799, empowered the Governor in Council, in whom was at that Time vested the Powers of the Superior Criminal Court, “after considering the Proceedings “ (in referred Cases), either to require further Evidence, if he see Occasion, or to pass such “ final Sentence as may appear,” &c.

The Code of 1827 first came into operation in the Month of September that Year. I have examined the Records of the Court, and find that they contain an uninterrupted Stream of Precedents, proving that from the first Introduction of the Code up to the present Discussion the Court has interpreted it as conveying the Power in Cases referred under Clause 2, Section 13., Regulation XIII., of calling for further Evidence, should they see fit. The first of these Precedents occurred in 1827, when the Court, composed of Messrs. Romer and Sutherland, referred back a Case for further Evidence to the Judge of Poonah. In 1828 I have discovered Four similar Cases, Messrs. Romer, Sutherland, and Kentish constituting the Court. In this Year, moreover, it is worthy of Notice, that the Court, composed of Messrs. Anderson, Bailie, and Henderson, in the Case of Gunesh Venaick, censured a Zillah Judge for having re-opened a Case after it had been concluded in his Court, as contrary to the Procedure prescribed by the Regulations for the Conduct of a Trial in such Court, thereby drawing a Distinction between the Power vested in an inferior Court and the Discretion allowed to the superior Court to direct Evidence on particular Points to be obtained, when Cases are referred for its Confirmation. In 1830 I find no less than Five Precedents ; viz., Cases Nos. 23, 31, 35, 36, and 37, the Court being composed of Messrs. Sutherland, Ironside, and Bailie. In 1831 there were Three ; in 1834, Four ; and in 1835, Two Cases ; the Court during Three Years being composed of Messrs. Barnard, Anderson, Henderson, and Greenhill. Passing over the Four succeeding Years, the Records of which I have not considered it necessary

to consult, I find that the Court, composed in 1840 of Messrs. Marriott, Greenhill, Bell, and Giberne, referred Two Cases; and again, passing over Four Years, that the Court of 1845, composed at different Times of Messrs. Bell, Brown, Pyne, Hutt, and Le Geyt, referred back for further Evidence no less than Seven Cases; namely, Nos. 29, 32, 49, 150, 166, 191, and 193.

7. Hence it appears, therefore, that the Practice of the Sudder Court of this Presidency, now for the first Time objected to, commenced on the Introduction of the Code of 1827, and has continued during the last Eighteen Years, under the Interpretation of the Law given by no less than Fifteen Judges who have in succession sat in that Court, as enumerated in the Margin. I need not observe to my Colleagues that this List includes some of the most eminent and distinguished Judicial Officers of this Presidency; and when to this I add, that it includes the Names of some who were consulted on the Construction of the Code, but above all the Name of Mr. Barnard, who was a Member of the Committee who compiled the Code, and who I have Grounds for stating was the Person who chiefly framed Regulation XIII., on which the Practice is founded, I think we ought in Reason to conclude, that, whatever Doubts may arise on a Consideration of the different Clauses of the Regulation I have recited in Paragraph 4, the Intention of the Legislature on the Point at issue has been rightly interpreted, namely, that the Sudder Court shall have the Power to call for further Evidence at its Discretion, when Cases are referred to it under Clause 2, Section 13., Regulation XIII.

8. But leaving this out of Consideration, I would strongly deprecate, except in Cases of a very emergent Nature, the Court of To-day annulling the Interpretations of the Laws and Decisions founded thereon of former Courts. It is a very unusual Proceeding for a Court to annul the Precedents it has itself established, and *stare decisis* is a well-known Maxim observed by Courts of Law in England. A contrary Practice would lead to Confusion in what is already a sufficiently complex System. The only proper Mode of annulling a bad Precedent is by Appeal, if such be allowed, to a superior Tribunal, or (and this is the Course which should be pursued in India) by a Representation to those vested with Legislative Functions, pointing out the particular Provisions of the Law which it is considered proper to annul or modify.

9. I am therefore, on all the above Grounds, of opinion that this Court should not take upon itself now to interpret the existing Law in a Manner different from that in which it has been interpreted by preceding Courts, and thereby, by Implication, declare that numerous Decisions during the last Eighteen Years, in Cases of the gravest and most solemn Description, are bad in Law. I would uphold the Practice as it exists until corrected by competent Authority; and with this View, if the present Court rule that the Practice is vicious and bad, and are therefore of opinion that the Law on which it is founded should be amended, a Representation should be made to Government under Section 27, Clause 3, Regulation XIII. of 1827, in order that the Subject may, if deemed expedient, be brought under the Consideration of the Legislative Council of India.

(Signed) J. P. WILLOUGHBY.

MINUTE recorded by B. HUTT Esq., Puisne Judge.

I fully admit the Force of the Argument brought forward by the Honourable the Chief Judge; but, bound as I am to act according to what appears to be the Meaning of the Law, I must still adhere to the View I before recorded in Case No. 62. before the Court in April 1843.

(Signed) B. HUTT.

MINUTE recorded by P. W. LE GEYT Esq., Puisne Judge.

After the elaborate Examination of the Question before us by the Honourable the Chief Judge, it is needless for me to enter at any Length upon the Arguments which he has adduced for the upholding the long-established Practice of this Court on this important Point. I therefore content myself with recording my Opinion, that an Interpretation on Section 29, Clause 3, of Regulation XIII. of 1827 should be published, that it is legal for the Sudder Foujdurree Adawlut to remit a Case referred for Confirmation for taking further Evidence, when it appears necessary for the Ends of Justice so to do. As to an Alteration in the Law, as suggested by the Honourable the Chief Judge, I reserve my Opinion until the Matter is regularly before us.

(Signed) W. P. LE GEYT.

MINUTE recorded by G. GRANT Esq., Acting Puisne Judge.

I must enter my strongest Protest against the re-opening of the Prosecution in this Case, as suggested by Mr. Le Geyt. Such Procedure is, in my Opinion, opposed to one of the very first Principles of Justice, namely, that no Man shall be tried twice for the same Offence, and directly to the Regulations.

The English Law so leans to the Side of Mercy that a Blot in the Indictment, even after a Case has gone to the Jury, is, I believe, generally fatal to the Prosecution; certainly always so after Verdict. But without entering into the Discussion of these nicer Refinements, it may be advanced without Fear of Contradiction that Justice absolutely requires that there should be some definite Period or Stage of a Trial at which the Prosecution shall close, not nominally to be re-opened at the Pleasure of the trying or reviewing

reviewing Authority, but *bonâ fide* so as to enable the Accused to enter on his Defence without the Fear of being entrapped into or in his Confusion stating anything that may be afterwards used against himself. Under the System advocated by Mr. Le Geyt there can never be any Certainty that the Prosecution has closed. Half the Evidence only against a Prisoner may be taken in the first instance; Half kept back, to be brought forward with a dunning Effect, when the Defence having been heard, and the Evidence perhaps summed up, it has been shaped to meet its strong Points. No Man could be safe under such a System. Evidence which taken at the same Time would have been easy of Refutation and Exposure may when taken Piecemeal at long Intervals be quite unassailable. These and many others which it would be Waste of Time to enumerate are Objections insuperable, in my Opinion, to a Trial conducted on such loose Principles.

The Laws of our own Country, the Regulations enacted for our Guidance in this, declare that the Period at which a Prosecution closes shall be *before* a Prisoner is put on his Defence. Section 29. Clause 3. of Regulation XIV. of 1827 runs thus:—"The Prisoner shall always be called on for his Defence after the Evidence for the Prosecution has been completed." But according to the View entertained by Mr. Le Geyt the Prosecution never closes! All the Forms required by Law may have been gone through,—Prosecution, Defence, and Verdict,—and the Prisoner (possibly an innocent Man) having been subjected to a long and harassing Trial, and successfully met the Charges brought against him, he on the Point of being discharged, when he is again thrown into Prison, and subjected afresh to all the Misery, Anxiety, and Suspense of a Trial, because somebody has thought of some Evidence, not called for the Prosecution, which might possibly lead to a Conviction; Evidence, perhaps, suborned to supply an Omission, or meet some Objection pointed out by the Judge in his summing up. To my Mind such a State of Things is frightful.

Nemo his debet vexari is a humane Maxim, the Soundness of which both Theory and Practice have universally subscribed to in our own Country; and I for one cannot see why a more stern or less equitable Measure of Justice than that involved in it should be dealt out to the Natives of this.

A Prisoner at the Bar of this Court against whom the Court considers that the Evidence on the Record of his Trial will not justify a Conviction stands virtually acquitted, and consequently to find him guilty by means of fresh Evidence taken, or other Law, and adjudge any Punishment on such Conviction, is to all Intents and Purposes enhancing the Sentence which the trying Authority was authorized to pass.

The Ends of Justice, it is contended, can be attained only by adopting the Procedure advocated by Mr. Le Geyt. The Ends of Justice and the Conviction of a guilty Party are Two very different Things. It is quite clear that the latter may be only attainable by the Course proposed. In the present Case it might be so, and in many others; but in considering a Matter of this Nature the Question is not, I would submit, whether an Offender here and there escapes, but whether we are proceeding on right and sound Principles. It is only by doing so that the Ends of Justice can be properly attained. Sound Principles require that a guilty Person should be permitted to escape rather than his Conviction be brought about by improper Means. A Regard for the Protection of the innocent, and the Consideration which is considered due even to the guilty, have rendered it necessary to prescribe certain fixed Rules for the conducting of Trials. An Adherence to these may frequently operate as a Bar to the Conviction of a Party of whose Guilt no Doubt can be entertained, but in the main they promote the true Ends of Justice, and they cannot be departed from without a Violation of both Law and Right.

If the Practice against which I am contending is the correct one, a Session Judge's Authority is limited to a sort of preliminary Investigation, to the Preparation of Cases to be tried by the Sudder Foujdaree Adawlut; yet the Regulations tell us that he can acquit, and that the Sudder Adawlut cannot make void such Acquittal; that he may pass Sentence, and that the Sudder Adawlut cannot enhance that Sentence. I conceive that this Court has *no trying Authority whatever as regards Prosecutions*, their Functions being limited to weighing and considering the Evidence set forth on the Judge's Record of the Trial. It is by Law expressly debarred from enhancing any Sentence passed by the lower Court; and surely when it has recorded an Opinion that the Evidence on the Record did not warrant a Conviction, it is to all Intents and Purposes an Enhancement of the Sentence to do anything by which the Acquittal and Discharge to which they have declared that the Accused was entitled are converted into Conviction and Punishment.

I maintain, however, that it is not competent to the Session Judge to take Evidence for the Prosecution after a certain Stage in the Trial, when a Prisoner has been assured that the Prosecution has closed, and has been called on to defend himself against the Evidence thereupon recorded. On no Principle of Equity or good Faith can further Evidence be admitted in support of the Charge, which must stand or fall on the Evidence, so far as the Prosecution is concerned, thereon on the Record.

It is argued that there are Precedents for the Practice which I am opposing. Admitting this, I do not understand the Doctrine, that a Judge who is under a solemn Obligation to administer Justice, agreeably to Right and Regulation, according to the best of his Judgment, is bound to do what appears to him opposed to both, because others have done so before him. But how is it made out that such has been the Practice of the Court? A

few Cases can be adduced in support of it. A Thousand, I imagine, against it. In how many Cases have the Court, in acquitting Prisoners of whose Guilt no Doubt existed, recorded their Opinion, that the Court was constrained to acquit them,—because, from the Trial having been badly conducted,—the Evidence of some material Witness not taken,—a Confession not proved by the attesting Witnesses,—or other Irregularities, Omission, or Flaw,—a legal Conviction could not be had? Why were these Cases not all returned for the Omissions to be supplied, or the Irregularities rectified? Why were a Number of Prisoners at Sholapoor, in a Case forwarded a few Weeks ago by the Judicial Commissioner, acquitted, solely because of a mere Blot in the Proceedings, solemn Affirmation required by the Regulations not having been administered to a Boy whose Evidence established the Guilt of the Accused? Why was the Case not remanded, with Instructions to the Session Judge to administer the Affirmation and record the Boy's Evidence *de novo*? As I have said above, a Thousand Cases might, I imagine, be adduced, furnishing Precedents for my View of the Law.

It does not appear to me that Clause 3. Section 29. of Regulation XIII. of 1827 in any way whatever affects the Question. It simply gives this Court Authority to cause the Criminal Judges to take Evidence or make Inquiry on any Subject before it; that is, I hold, legitimately before it. The Court might have a Case before it in which it was evident that the Prisoner had been unlawfully apprehended, was not subject to its Jurisdiction, or could not for some other Reason be legally proceeded against. It could not, under these Circumstances, surely direct a Judge or Magistrate to take *Evidence for the Prosecution*. And no more can it, I am of opinion, direct fresh Evidence to be taken in support of a Prosecution the Evidence for which the Regulations declared to *have been previously completed*. The Case for the Prosecution is not in fact before the Court, save as it stands *on the Record of the Trial*.

With all due Deference to those Judges who have sanctioned the Procedure now under Discussion, to re-open, with the view to strengthening the Case for the Prosecution, a Criminal Charge on which Sentence has been passed after hearing the Defence, is directly opposed to every Principle of Equity and good Faith.

(Signed) G. GRANT.

The Court resolves, that it is competent to the Sudder Foujdaree Adawlut, under Clause 3. Section 29. Regulation XIII. of 1827, to remit a Case referred to it for Confirmation, in order that further Evidence may be taken for the Prosecution, when such Procedure appears necessary for the Ends of Justice.

This Resolution to be published as an Interpretation. The Court further resolves, that the Proceedings be laid before Government, with their Recommendation that the Question be brought to the Notice of the Legislative Council of India, with a view to an Alteration of the Law, if such is considered necessary.

The Chief Judge withdraws.

The Case to remain under Consideration.

Resumed Consideration of the Two Petitions from the above-named Prisoners, last before the Court on the 26th August 1846.

Resumed Consideration of the Petition of Rungya bin Limbajee, last before the Court on the 1st September 1846.

Under Consideration.

Enclosure 2 in No. 119.

MINUTE by the Honourable the GOVERNOR, dated 14th October.

As this Question involves a general Principle of Procedure, I think it should be submitted on its Merits to the Government of India, who may see fit to refer it for the Consideration of the Law Commission.

The Practice which, long continued, the Sudder Adawlut have now upheld by the Authority of an Interpretation, may perhaps be opposed to the strict Letter of our Regulations, but I have often had Opportunities of seeing the good Effect of it, and I consider it far better suited to the existing State of Society in India than the more refined System of Procedure which obtains in England.

(Signed) L. R. REID.

• Enclosure 3 in No. 119.

MINUTE by the Honourable Mr. WILLOUGHBY, dated 15th October.

I concur in this Question being referred for the Consideration of the Government of India; and for my Sentiments on the Subject I beg to refer to the Opinion I have recorded as Officiating Chief Justice of the Sudder Dewanee and Sudder Foujdaree Adawlut accompanying this Reference.

(Signed) J. P. WILLOUGHBY.

Enclosure 4 in No. 119.

MINUTE by the Honourable Mr. BLANE, dated 17th October.

The Merits of the Case, it appears to me, are clearly and ably stated in the Opinion recorded by the Chief Judge. The opposite View of the Question is also very ably argued by Mr. Grant. Considering the Extent to which the Practice of taking fresh Evidence is supported by Precedent, the Doubts which have been raised as to its Legality can only, I think, be satisfactorily disposed of by the Reference to the Government of India now proposed by the Honourable President.

I incline at the same Time to the Opinion that there is something repugnant to the Maxims of British Justice in taking fresh Evidence after the Trial has been closed, with a view to Conviction of the Prisoner. The same Objection to that Course would not exist if required to determine regarding a Mitigation of the Sentence. It is therefore for Consideration whether the Competency to order the Re-investigation of any particular Points might not be reserved under certain Limitations, in preference to its being absolutely debarred. A new Trial can be ordered when there are sufficient Reasons for it; but in such Case the Re-investigation must be entirely de novo, and not partial as to particular Omissions or Defects in the former Proceedings.

(Signed) D. A. BLANE

No. 120.

MINUTE by the Honourable C. H. CAMERON, dated 12th February 1847.

Case of Rujiga bin Limbajee and Mhalya bin Ragho.

This Reference from Bombay brings before us a very important Question of Criminal Procedure, viz., whether, when the Case for the Prosecution has closed, and the Prisoner been called on for his Defence, and Sentence has been passed by the Court which tried him, the Superior Court to which the Sentence is referred for Confirmation ought to be permitted to direct that fresh Evidence for the Prosecution shall be taken.

It seems to be One of those Questions which do not admit of a rigorous Selection. The English Criminal Procedure abhors such a Practice. But the English Criminal Procedure is, I think, in general, unreasonably favourable to the Prisoner. In this Particular, however, I am disposed to think that it is no more than reasonably lenient to him.

If the Question be put, Should a Prisoner be tried twice for the same Offence?—all Legislators and all Systems seem to agree in answering, that he should not. It is, however, undeniable that by such a Course the Escape of a guilty Man might here and there be prevented.

Taking for granted the Principle that a Prisoner should not be tried twice for the same Offence, it seems to me to follow that the Superior Court ought not to have the Power of directing fresh Evidence to be received for the Prosecution, when a Sentence is referred to it for Confirmation.

The proper Object of such a Reference is to ensure a correct Decision upon the Evidence which has been received.

I do not recommend that we should now legislate upon this insulated Question. There is now before the Council a Proposition of mine, that the Law Commission should be directed to prepare a Scheme of Pleading and Procedure, and a Set of Forms of Indictment adapted to the Definitions of Crimes in the Penal Code.

The important Question submitted to us by the Bombay Government will of course be decided in such a Scheme of Procedure, and it will be considered much more maturely by the Law Commission, and much more satisfactorily, as Part of a whole, than if the Legislative Council were now to undertake the Settlement of it.

The late Governor of Bombay recommends a Reference of the Subject to the Law Commission.

(Signed) C. H. CAMERON.

No. 121.

MINUTE by the Honourable F. MILLER, dated 23d February 1847.

There is a great Difference between the Constitution and Procedure of the Company's Criminal Courts in the Presidency of Bombay, and those of the Company's Criminal Courts in the other Presidencies.

In the Bombay Courts the European Judge sits singly ; he alone pronounces upon the Guilt or Innocence of the Accused ; and in case of Conviction passes Sentence, postponing Execution of such Sentences as involve high Degrees of Punishment until confirmed by the Sudder Foujadaree Adawlut.

In the Bengal and Madras Courts the Sessions Judge sits with a Mahomedan Law Officer, and when he disapproves of the Futwa given by the latter as to the Guilt or Innocence of the Accused, or when, in concurrence with the Law Officer, he convicts the Accused of a Crime punishable with Death, Transportation, or Imprisonment exceeding a certain Term, he passes no Sentence, but refers the Case for the Decision of the Sudder Court.

In the above Remarks I mean to state generally the Constitution and Practice of the Courts in the Three Presidencies. There are Exceptions, but not of much Importance in considering the present Question.

In all the Presidencies it has been the Practice of the Sudder Court in referred Trials to remit the Case to the lower Court for further Evidence, where they deemed such a Course necessary. In Bengal the Sessions Judge, after taking additional Evidence for the Prosecution, calls on the Prisoner for his further Defence ; and such I presume is the Course in the other Presidencies.

I am inclined to agree with Mr. Cameron, that the Practice is objectionable on general Principles, though I think, with reference to their different Procedures, the Objection applies less to the Bengal and Madras Courts than to those of Bombay.

In all the Presidencies the Sessions Judge may adjourn Proceedings in a Trial when any Witnesses summoned have failed to attend, or further Evidence may be considered necessary. There is therefore the less Reason why the Superior Courts should possess the Power of directing fresh Evidence to be taken for the Prosecution. No Pains should be spared to make the Trial complete. Vesting in the superior and reviewing Court a Power to call for further Evidence must have some Tendency to introduce Carelessness in the Proceedings of the Court trying the Case.

Mr. Cameron's Proposition that the Law Commission should be employed in the Preparation of a Scheme of Procedure to follow the Penal Code has not yet been considered. I can therefore only say, that as at present advised I think it is the most useful Purpose to which their Labours could be applied.

With such a Measure in prospect, I deem it unadvisable to legislate upon the Point under reference.

(Signed) F. MILLETT.

No. 122.

MINUTE by the Honourable Sir T. H. MADDOCK Knight, dated 15th March 1847.

The Judges of the Court having themselves disposed of the Question for the present, it may not be advisable for us to take up the Subject but as a Part of one general Legislation.

The Practice of all the Sudder Courts ought to correspond on a Point of so much Importance to the even Administration of Justice as that now brought to our Notice.

(Signed) T. H. MADDOCK.

No. 123.

THE INDIAN LAW COMMISSIONERS to G. A. BUSHBY Esq.

Indian Law Commissioners Office,
5th November 1846.

Sir,

With reference to your Letter under Date the 15th August last, we have the Honour to transmit to you, for the Purpose of being laid before the Honourable the President in Council, Six printed Copies of our Report upon the Penal Code. The rest will be retained by the Printer, to be disposed of under your Instructions.

2. We have prepared a Postscript to the Report, referring to some Modifications of the Law of England recommended by Her Majesty's Commissioners for revising and consolidating the Criminal Law, in their Second Report, which has been lately received, which will be printed and laid before Government without

Delay. These Modifications we deem it necessary to notice, as some of them are intended to bring the Law of England into exact Conformity with the Provisions of the Penal Code on the Points to which they relate, and are founded upon the Reasoning of the Indian Law Commissioners in the Notes to the Code, and some others are Approximations to the Rules of the Code.

We have, &c.
(Signed) C. H. CAMERON.
D. ELLIOT.

No. 124.

D. ELLIOT Esq. to G. A. BUSHBY Esq.

Indian Law Commissioners Office,
26th November 1846.

Sir,

I HAVE the Honour to transmit to you herewith Six printed Copies of the Postscript to the Report upon the Penal Code, adverted to in the Letter addressed to you under Date the 5th instant.

I have, &c.
(Signed) D. ELLIOT,
Member of the Indian Law Commission.

No. 125.

MINUTE by the Honourable C. H. CAMERON, dated 13th November 1846.

Report of the Law Commission on the Penal Code.

I have signed this Report, and fully approve of it. But I think it ought to be known to my Colleagues and to the Home Authorities that the great Labour which has been bestowed upon it, and the great Merit which in my Opinion it possesses, are Mr. Elliot's, and his only. The Report is entirely his Composition; and all the Assistance I have rendered him has consisted in discussing with him the various Subjects of which it treats, and in occasionally suggesting Additions, Retrenchments, or Corrections. The Report appears to me to show decisively that the Chapters of the Penal Code which are examined in it have passed successfully through that Ordeal to which they have been very properly subjected; I mean, the Criticisms of the Judges of the Supreme and Sudder Courts, and other high Functionaries of the Presidencies and Mofussil; and I have no Hesitation in recommending that these Chapters should be substituted in the Mofussil for all the existing Law on the Subject. The Bombay Government has more than once asked for the Penal Code, and, according to the Charter Act, we ought either to give them what they ask for or to assign Reasons for the Refusal. If it is thought desirable not at once to change the Law throughout the whole of India, Bombay offers itself, by the Mouth of its Government, to take the Lead in this great Improvement.

With regard to the Presidencies, I do not at present make any Recommendation; I reserve myself until it shall be decided whether we are to go on with Two Systems of Law whose Defects are of an opposite Kind, one Sort administered by Judges who have been trained in Jurisprudence, the other by Judges who want that Preparation,—or whether we are to have One System for British India, framed according to the best Lights of the present Day, and to place at the Head of the Judicial Establishment which is to administer that System the Men who have had the regular Education of professional Lawyers, associated in one and the same Court with the Men who have had most Experience of the Laws and Usages of the several Native Races who inhabit this Peninsula.

When I arrived in this Country, and endeavoured to take a Survey of the vast Field of Legislation which Parliament had marked out for the Law Commission, with a view to devise a regular Plan for its Proceedings, I felt strongly impressed with the Expediency of beginning with the Presidency Towns. I thought that by abolishing all those Technicalities of English Law and Procedure which are not the technical Forms of any really useful Principles, and by uniting in One Court of original Jurisdiction all those Powers which Experience has shown to be beneficial in that Variety of Courts and System which has sprung up without any general Design in England, we should be able to

produce a Scheme of Judicature which, being framed by Selection from the greatest Variety of long-tried Materials, would probably be the best that has ever existed, and would of course afford the best Model for Imitation in reforming the Courts of the Mofussil.

But having been foiled in every Attempt to make Progress in this Direction, I am now disposed to recommend that every Improvement which we may desire to introduce into India should be introduced into the Mofussil.

It is true that Bombay has been a partial Exception to the general Resistance* which the Judges of the Supreme Courts have felt it their Duty to offer to the Innovations of the Law Commission. Sir John Awdry declared himself ready to administer the Penal Code; and Sir Erskine Perry is prepared to do that, and also to preside in a Civil Court framed upon the Plan suggested by the Law Commission. But the Chief Justices at Bombay have hitherto taken a different Line, and Sir David Pollock has so recently arrived that it would scarcely be fair to address to him a Question which he could not answer without a careful Perusal of so long and elaborate a Document as the Penal Code.

* Note. I need hardly say that I am not presuming to impute Blame to the Judges of the Supreme Courts. I of course think them in error, as I think the Law Commission in the Right; but as I am sure their Resistance is conscientious, it would be the highest Arrogance in me to expect that they should waive their Objections. I may mention that Sir E. Ryan and Sir B. Malkin used to think favourably of the Penal Code while it was in progress, and also that they thought a fair Trial should be given to the subordinate Criminal Court proposed by the Law Commission.

Under all the Circumstances of the Case, the practical Measure I recommend is, that we should accede to the Request of the Government of Bombay, so far as to prepare an Act embodying those Sections of the Penal Code which form the Subject of the Law Commission's Report, and enacting them for the Presidency of Bombay, except the local Limits of the Judicature of the Supreme Court; and I would at the same Time suggest, that the Law Commission be directed to prepare a Scheme of Pleading and Procedure, and a Set of Forms of Indictment, adapted to the Definitions of Crimes contained in those Sections of the Code. We might fix the Second Reading of the Act at so distant a Date as to admit of this Scheme of Pleading and Procedure being prepared, embodied in an Act, and read a First Time, so as to be ready for the Second Reading at the same Time with the Portion of the Code to which they relate.

(Signed) C. H. CAMERON.

No. 126.

MINUTE by the Honourable Sir T. H. MADDOCK, dated 24th February 1847.

Report of the Law Commission on the proposed Penal Code.

I HAVE in the first place to apologize to my Colleagues for my long Detention of these Papers, which have been with me for upwards of Three Months.

The Subject to be considered is one so extensive and important, and the Proposition of my Honourable Colleague, Mr. Cameron, that we should at once prepare an Act for Bombay embodying those Sections of the Penal Code which are the Subject of the Report of the Law Commission, appeared to me to require such mature Deliberation, that I was from Time to Time induced to defer the Consideration of the Papers, in hopes of finding Leisure, which I have not yet found, for the Purpose.

But as I now find that the Consideration of another Question, arising out of a Reference from the Government of Bombay, is likely to be suspended till we can come to a Resolution on that Part of Mr. Cameron's Proposition which relates to the Employment of the Law Commission in the Preparation of a System of Procedure to accompany the Code, I will no longer detain the Papers, with a view to deciding whether I can concur with my Colleague in the Measure which he proposes of making certain Chapters of the Penal Code Law in the Bombay Presidency out of the Jurisdiction of Her Majesty's Supreme Court, and there alone. At present I entertain serious Doubts of the Expediency of such a Course of partial Legislation with respect to a Code of Law intended for universal Application. But I can have no Hesitation about the Propriety of preparing a System of Procedure intended to form Part of the Code whenever it may become Law, and I am willing to give immediate Instructions to the Law Commission to that Effect. But I would wish to defer publishing the selected Chapters, with the Form of Procedure annexed,

as one proposed legislative Act, till we can deliberate on the whole Measure, and decide on the Expediency of the Plan recommended by Mr. Cameron for our Adoption.

(Signed) T. H. MADDOCK.

No. 127.

MINUTE by the Honourable F. MILLETT, dated 12th March 1847.

Report of the Law Commission on the Penal Code.

I HAVE read this very able Report of the Law Commission on the principal Chapters of the Penal Code with great Interest, and I may add with the highest Satisfaction also.

After a careful Revision of these Chapters, with reference to the Criticisms received from the public Functionaries in the several Presidencies, to the Reports of the Commissioners on the English Criminal Law, and to other Penal Codes, the Commissioners submit it as their deliberate Opinion that this Portion of the Code "is sufficiently complete, and, with such slight Modifications as they " have suggested, fit to be acted upon; and that if it be brought into operation " it may be reasonably expected to work an important Improvement in the " Administration of Criminal Justice."

In the Expectation that the Report on the remaining Chapters will not be less favourable, we have thus a fair Ground for anticipating that the Country will at no distant Period experience the Benefit of an entire Code of Penal Law, and that the vast Labour and great Expense attending its Preparation will not have been fruitless.

When the Report of the remaining Chapters is received, if it prove generally favourable, I think the best Course will be to republish the Code, with such of the proposed Amendments as we may determine to adopt, accompanying it with the Draft of a Law, to be read a Second Time after a considerable Interval, enacting that the Code shall come into operation throughout the Mofussil of the Three Presidencies on a certain Date; and I would suggest that Copies of the Law Commission Reports be sent at the same Time to the subordinate Governments, for Distribution among such public Functionaries as were before requested to give their Opinions on the Code.

I propose this Method of enacting the whole Code at once, because such is the mutual Relation of its Parts that I fear it would be very difficult to make any Portion of it complete in itself; and the Delay occasioned would be of comparatively little Importance. And I would not limit the Operation of the Code to the Mofussil of Bombay, because if I considered it suitable to that Part of British India I should consider it equally suitable to the Mofussil of the other Presidencies, where, indeed, it is more required than in Bombay.

The Reasons assigned by Mr. Cameron for not making at present any Recommendation in respect of the Presidencies have great Weight, and this is a Part of the Subject which requires more Consideration.

With regard to the Preparation of a Scheme of Pleading and Procedure, with Forms of Indictment, adapted to the Provisions of the Code, I continue of the Opinion I expressed in my Minute of the 23d ultimo, that the Law Commission would be most usefully employed in that Manner after the Completion of the further Report on the Code.

I concur, however, with the Commission, that the Code "might be brought " into operation in the Company's Courts with little, if any, Alteration of Pro- " cedure, with the Help of a few plain and simple Directions as to the Manner " of laying the Charges, and some Rules to define the Offences falling to the " Jurisdiction of the several Courts with reference to the Punishments they " are respectively authorized to inflict;" and therefore, if the Scheme of Pro- cedure should be delayed by unforeseen Accidents, it would not in my Opinion be necessary to postpone the Operation of the Code on that Account. A few Rules and Directions would suffice as a temporary Substitute.

(Signed) F. MILLETT.

(No. 184.)

No. 128.

G. A. BUSHBY Esq. to the INDIAN LAW COMMISSIONERS.

Gentlemen,

Fort William, 20th March 1847.

THE President in Council has had under Consideration your very able Report and Postscript on the principal Chapters of the proposed Penal Code, dated respectively the 23d July and the 5th November last.

2. Copies of your Report and Postscript will be forwarded to the Honourable the Judges of Her Majesty's Supreme Courts at the several Presidencies, for their Consideration.

3. The Governments of the several Presidencies will also be furnished with Copies for Distribution among such of the public Functionaries as were before requested to give their Opinion on the Code, and whose Observations are noticed in your Report.

4. The President in Council is desirous that on the Completion of your Report on the remaining Chapters of the Code you should direct your early Attention to the Preparation of a Scheme of Pleading and Procedure, with Forms of Indictment adapted to the Provisions of the Code.

I have, &c.

(Signed) G. A. BUSHBY,
Secretary to the Government of India.

No. 129.

THE GOVERNMENT OF INDIA to the JUDGES of the Supreme Court at Fort William (No. 189.), Fort St. George (No. 246.), Bombay (No. 247.)

Honourable Sirs,

Fort William, 20th March 1847.

To Fort William, 4
Fort St. George, 3
Bombay, 3

WE have the Honour to transmit for your Consideration the accompanying printed Copies* of the Report of the Indian Law Commissioners on the principal Chapters of the proposed Penal Code.

We have, &c.

(Signed) T. H. MADDOCK.
F. MILLETT.

No. 130.

G. A. BUSHBY Esq. to SECRETARY to GOVERNMENT of Bengal (No. 185.), Fort St. George (No. 226.), Bombay (No. 210), North-western Provinces (No. 248.)

Sir,

Fort William, 20th March 1847.

1. the Deputy
Governor.
4. N. the Governor in
Council.
1. the Governor in
Council.
11. the Lt. Governor.
3 Bengal, 2 Copies.
Madras, 4 "
Bombay, 4 "
Agra, 2 "
Deputy Governor.
Government of Fort
St. George.
Government of
Bombay.
Lieut.-Governor.

I AM directed by the President in Council to request that you will submit for the Consideration of the the accompanying* printed Copies of the Report of the Indian Law Commissioners on the principal Chapters of the proposed Penal Code, with the Request of his Honour in Council to be favoured with the Sentiments of the on this important Subject.

2. I am at the same Time directed to transmit to you, for Distribution among the public Functionaries who were before consulted, the accompanying† additional printed Copies of the above Report.

I have, &c.

(Signed) G. A. BUSHBY,
Secretary to the Government of India.

† Bengal, 200
Fort St. George, 150
Bombay, 100
N.W. Provinces - 150

No. 131.

(No. 444, Legislative.)

G. A. BUSHBY Esq. to H. M. ELLIOT Esq.

Sir,

Fort William, 22d May 1847.

I AM directed by the President in Council to request you will place before the Right Honourable the Governor General the accompanying Copy of a

Despatch* this Day addressed to the Honourable the Court of Directors, together with a printed Copy of a Report dated 23d July, and a Postscript to the same, dated 5th November 1846, furnished by the Indian Law Commissioners, with reference to the Draft Penal Code; also Copies of the Minutes† which have been recorded by the President, and by the Honourable Messrs. Millett and Cameron.

2. I am at the same Time directed to forward Copies of a Communication from the Government of Bombay, dated 4th November last, No. 73, with its Enclosures, and of the Minutes, as per Margin‡, which were recorded thereon, referred to in Paragraph 2 of the Letter to the Court of Directors.

I have, &c.
(Signed) G. A. BUSBY,
Secretary to Government of India.

* No. 13 of 1847 dated 22d May 1847.
† Minute by the Mr. Cameron, dated 13th Nov. 1846.
‡ Minute by the Hon. Sir Herbert Maddison dated 24th Feb. 1847.
Minute by the Hon. Mr. Millett, dated 12th March 1847.
† Minute by the Mr. Cameron, dated 12th February 1847.
Minute by the Hon. Mr. Millett dated 23d February 1847.
Minute by the Hon. Sir Herbert Maddison dated 15th March 1847.

No. 132.

RESOLUTION respecting proposed TRANSLATION.

Fort William, Home Department, Legislative, 20th November 1847.

Read Despatch from the Honourable the Court of Directors, No. 9. of 1847, dated 15th September, relative to the Penal Code.

The President in Council remarks, that the Law Commissioners, in their Report dated 14th October 1837, recommended that the Native Population should with as little Delay as possible be furnished with good Versions in their own Language of the Penal Code, if the Government should be disposed to adopt it. They noticed that in their Opinion such Versions could be produced only by the combined Labours of enlightened Europeans and Natives, and that it was not probable that Men competent to execute all the Translations which will be required would be found in any single Province of India.

The Honourable Court suggest, in Paragraph 5 of the above Letter, that some Portion of the Code may be carefully translated into One or more of the Native Languages, and direct that Copies of the Translations be forwarded to the Court.

The President in Council would, in pursuance of the Instructions of the Honourable Court, select for Translation Chapter XVIII., "Of Offences affecting the Human Body," and Chapter III., "General Exceptions." It shall be hereafter determined under what Arrangement the Translation shall be undertaken.

Ordered, that the Papers be brought up for further Consideration, on the Arrival of the Governor General at the Presidency.

No. 133.

RESOLUTION respecting proposed TRANSLATION.

Fort William, Home Department, Legislative, 24th December 1847.

Read again the Resolution of the President in Council, dated the 20th ultimo, respecting the proposed Translation into One or more of the Native Languages of a Portion of the Penal Code.

Resolution.—In consideration of the eminent Acquirements of Mr. H. M. Elliot, the Governor General in Council is pleased to select that Gentleman to superintend, in communication with the Law Commission, an Oordoo Translation of the Two Chapters of the Penal Code noticed in the 3d Paragraph of the above Resolution.

Ordered, that Mr. Elliot be informed accordingly, and be furnished with the requisite Documents, with Authority to engage temporarily such Native Assistants as he may consider necessary, charging for the Expense in a contingent Bill.

Ordered, further, that the Law Commission be informed of this Arrangement, and be requested to afford Mr. Elliot all the Aid in their Power in the Undertaking intrusted to his Superintendence, in communication with the Commission.

No. 134.

G. A. BUSHBY Esq. to H. M. ELLIOT Esq.

Sir,

Fort William, 24th December 1847.

WITH reference to a Recommendation of the Law Commission, that the Native Population should be furnished eventually with good Versions in their own Language of the Penal Code prepared in that Commission, the Honourable the Court of Directors have desired that a Portion of the Code be carefully translated into One or more of the Native Languages; and the President in Council having recently selected for Translation Chapter XVIII. "Of Offences affecting the Human Body," and Chapter III., "General Exceptions," I am directed to acquaint you, that in consideration of your eminent Acquirements the Governor General in Council has been pleased to select you to superintend, in communication with the Law Commission, an Oordoo Translation of these Chapters.

* Extract Paragraph 5
from a Despatch from
the Court of Directors,
No. 9, of 1847, dated
15th September
Resolution, 20th Nov

2. For this Purpose I am directed to transmit to you a Copy of the Penal Code, together with Copies of the Papers noted on the Margin*, and to authorize you to entertain temporarily such Native Assistants as you may consider necessary to assist you in the Work, charging for the Expense in a contingent Bill.

3. A Copy of this Letter will be sent to the Law Commission, with a Request that they will afford you all the Aid in their Power in the Undertaking intrusted to your Superintendence in communication with the Commission.

I have, &c.

(Signed) G. A. BUSHBY,
Secretary to Government of India.

No. 135.

G. A. BUSHBY Esq. to the INDIAN LAW COMMISSIONERS.

(Home Department, Legislative, No. 821).

Gentlemen,

Fort William, 24th December 1847.

I AM directed to transmit, for your Information, a Copy of my Letter of this Date to Mr. H. M. Elliot, respecting an Oordoo Translation of a Portion of the Penal Code, and to convey the Request of the Governor General in Council, that you will have the goodness to afford to that Gentleman all the Aid in your Power in the Undertaking which his Lordship in Council has been pleased to intrust to his Superintendence in communication with the Law Commission.

I have, &c.

(Signed) G. A. BUSHBY,
Secretary to the Government of India.

No. 136.

H. M. ELLIOT Esq. to G. A. BUSHBY Esq.

Sir,

Fort William, 12th February 1848.

I beg to acknowledge the Receipt of your Letter No. 821, dated 24th December, informing me that the Honourable Court of Directors have desired that a Portion of the Penal Code be carefully translated, and communicating in very flattering Terms the Selection of me by the Governor General in Council to superintend a Translation of Chapters III. and XVIII. into the Oordoo Language.

2. I have employed myself during the past Month in endeavouring to carry into effect the Wishes of the Honourable Court, and in submitting my Translation I trust that it will prove satisfactory to them and to the Governor General in Council.

3. I have found no Difficulty in translating this Portion of the Code, and have had no Occasion to consult with the Members of the Law Commission on the Meaning of any Expression. Indeed the Sense of every Clause is so obvious, the System so coherent, and the Arrangement so lucid, that it is difficult to comprehend how any Misconstruction can arise.

4. I hope it may be well understood that the Translation boasts of no literary Merit. The Oordoo, or Hindustance Language, is itself far from elegant, and though well adapted to Narrative and Conversation, is somewhat deficient in Precision, and requires much Circumlocution to render it a fit Medium for conveying those nice Distinctions of Meaning which pervade Works of such a highly artistic Character as the Penal Code, in which not only are the fictitious Parties, A, B, and Z, placed often in Circumstances which do not occur in the ordinary Transactions of Life, but Words are also introduced to characterize the Faculties and Operations of the Mind, the Punishment of Guilt being made dependent upon the Kind of Intention and Degree of good Faith which actuated the Transgressor.

This Inelegance of the Language chiefly arises from the frequent Iterations of Particles, or relational Words, almost every Case requiring not only an Inflection but its concomitant Postposition, the Changes being most frequently rung upon such barbarous Sounds as *ka, ke, kee*; and although, by a more frequent Use of Persian, many of them might have been dispensed with, and although such a Use of that Foreign Language would have been perfectly legitimate, and my Task would thereby have been rendered very much easier, yet Hindustance so constructed is understood only by the learned Classes, or by the highest Grades of Citizens, and is perfectly unintelligible to the Mass of the Population. Any one will be ready to confess this who has witnessed the not-uncommon Occurrence of a plain-spoken Farmer in the North-western Provinces, after giving his Deposition, and being called upon to acknowledge it as such when read out to him by a learned Moonshee, expressing as much Astonishment at its being called Hindustance as the Gentleman in Moliere, when he found to his Surprise that the Language he had been speaking all his Life was Prose.

5. My main Object has been to make the Sense intelligible to the People, high and low. I have not written any Sentence that has not been fully approved of by a learned Mahometan, and by a Hindoo well versed in the ordinary Language of the middle Classes, and I am satisfied that no Sentence is liable to the Charge of Ambiguity, for in my Endeavour to avoid that particular Fault I have sacrificed all Perseness and Refinement of Expression, which might have been so applied as to redeem the Translation from the Character which I fear may be ascribed to it, of being harsh and inharmonious. There is no Language in which, by labouring to be brief, you become so hopelessly obscure as in Hindoostance. I trust that full Weight will be given to this chief Consideration by which I have been actuated; because as the Translation is to go to England, and to be approved there, it is more likely to be tested by the Excellence of its Style than by its Merits as a faithful Version of the Original, which has been itself accused of "Obscurity," "Unintelligibility," and "Ruggedness of Phraseology."

See Pages 22 and 1
of the First Report
on the Code

6. If it should be pronounced that I have failed in this simple Object, I must then shelter myself under the admitted Difficulty of the Undertaking. The Law Commissioners observe in the last Paragraph of the Preface to the Code, "Versions, in our Opinion, can be produced only by the combined Labours of enlightened Europeans and Natives; and it is not probable that Men competent to execute all the Translations which will be required would be found in any single Province of India. We are sensible that the Difficulty of procuring good Translations will be great."

7. In Paragraph 65 of the First Report of the Penal Code, the Commissioners observe, "Many Persons have found Fault with the Composition of the Code, as being in many Places framed in a Style very difficult to be understood; some indeed have pronounced Parts of it to be unintelligible; and several have declared their Opinion that it is incapable of being translated, and therefore useless for the general Purpose for which it was intended."

8. Again, in Paragraph 68, they observe, "Mr. A. D. Campbell is one who has pronounced the Code to be 'absolutely untranslatable;' but the Instance he adduces is not very convincing. 'It will be no easy Task,' he says, 'to convey in any of the Native Dialects the Meaning even of No. 24, which merely declares that 'to do a Thing' denotes Omissions as well as Acts, for in every Language 'to do' must stand opposed to its Omission.' We can only say that if there were no greater Difficulty than this to be overcome, the Task of Translation would in our Estimation be an easy Work. We

“ do not, however, think that it will be an easy Work ; on the contrary, we
 “ are of opinion with the Authors of the Code that ‘ the Difficulty of pro-
 “ curing good Translations will be great.’ ”

9. The able and elaborate Notes of the Law Commissioners upon Chapters III. and XVIII. would seem to imply that these very Chapters were selected for Translation as being the most difficult in the entire Code. If therefore the present Translation is considered sufficiently good, it may safely be declared that no Portion of the Code presents those insurmountable Difficulties to a Translator which have been anticipated. To be sure, some few Expressions in the Original are not quite in conformity with Native Notions. Pindarees, for instance, used in One of the Illustrations, is unknown as a generic Word to Natives. Pulling a Man’s Nose by way of Insult ; a Steel Trap ; or an explosive Substance under the Seal of a Letter ; shaking a Fist preparatory to an Assault : these, all of which occur in these Chapters, and some others, are in their literal Sense incomprehensible to a Native of India ; but it is not difficult to apply equivalent Expressions, or use a Circumlocution which shall fully convey the Sense of the Original.

10. Some of the simplest Phrases of the Code are the most difficult to translate into Oordoo. Take, for instance, “unnatural Offences.” My Coadjutors concurred with the refined Nations of Antiquity in considering that there is nothing at all unnatural in the Offences indicated under that Head. They thought that it would amount to a direct Contradiction in Terms to distinguish as “unnatural” in the only Sense which admits of Translation, namely, that of being “contrary to Human Nature,” those Offences to which, however revolting and abominable, Human Nature, in various Countries and Times, has been notoriously prone, and to the Practice of which it must be confessed that they see many of their own Countrymen addicted. I was compelled, therefore, to resort to a different Phraseology. Again, “voluntary culpable Homicide is Murder.” The only Word or Combination of Words used to express Murder contemplates solely voluntary Murder ; therefore to say “voluntary culpable Homicide is voluntary Murder” may seem tautological, but there appeared no Alternative. The etymological Meaning is only known to the Scholar, and its Retention in the Translation may fairly challenge Comparison with the “Homicide” and “Manslaughter” of our own Law, which, though etymologically identical, are legally applied to very different Offences.

11. These are a few of the minor Difficulties which will have to be contended with by those who are to complete the Translation, but they present no Obstacle which cannot be overcome by patient Labour, and by Intimacy with Native Processes of Thought. This last is the most essential Requisite, for where Languages like the Oordoo and English are the Product of a Civilization differing in History, Tendency, and Character from each other, it is obvious that the most simple and elementary Ideas having been obtained through different Channels, and having clothed themselves in Forms altogether foreign the one to the other, can only be fully realized to the Mind by Reference to the Sources whence they are derived. But any one who has mixed with the People, and has informed himself of their social State, of which the vulgar Tongue is the Index and the Exposition, and who knows the Inlets by which Truth can best insinuate itself into their Minds, will not find any great Difficulty in presenting to them a strange Idea in its most significant Form, and in determining how the Meaning involved in each Sentence can best be expressed, so as not to run counter to the general Current of their Experience. Should there be no other Alternative than to introduce an Innovation, it will be easy for him to consider what novel Mode of Expression, what parallel Metaphor, can be best devised consistently with the Scope and Genius of the Language, and with least Violation of idiomatic Propriety.

12. There can be little Doubt that with the general Knowledge now prevalent of Native Usages, Sentiments, and Institutions, many European Functionaries in India will be found possessed of this Degree of Knowledge, and that more than Half of them will, with a little Assistance from the Natives, be fully competent to transpose the Language of this admirable Code into Forms accommodated to the popular Intellect of the Country.

I have, &c.

(Signed) H. M. ELLIOT,
 Foreign Secretary to the Government of India.

ذکر جرم اٹلام اور مانند اوسکے

۳۶۱ جو شخص اپنے حظ نفسانی پہنچا حاصل کرے کے ارادہ کر کے کسی شخص کو یا کوئی جانور کو مساس کرے یا اس ارادہ پر اے کو اپنی خوشی سے مساس کراوے سزا اُسکی قید با مشنت یا بے مشنت ہوگی مبعاد چودہ برس سے زیادہ نہیں اور ہرگز دو برس سے کم نہیں اور وہ مستوجب جرمانہ بھی ہوگا *

۳۶۲ جو شخص اپنے حظ نفسانی پہنچا حاصل کرے کے ارادہ کر کے کسی شخص کو مساس کرے اور وہ شخص اپنی خوشی اور صحت عند سے رضاندے تو سزا اس مجرم کی قید با مشنت یا بے مشنت ہوگی مبعاد نایمی کے واسطے ہوسکتی ہی اور ہرگز سات برس سے کم نہیں اور وہ مستوجب جرمانہ بھی ہوتا *

جانے کہ وہ عورت اس بات کو سمجھ کر ہوئی کہ جس مرد سے اسکی شادی ہوئی ہے کہ اس مرد کے ساتھ اسکی شادی ہی وہ مرد بیہ ہی *

بھویں با رضامندی یا بے رضامندی عورت ب کہ اُسکی عمر نو برس سے کم ہو *

شرع

رم زبردستی زنا کے واسطے دخول کفیت ی

استثنا

نی جو رو کے ساتھ زبردستی سے زنا کسی میں نہیں ہوتی ہی *

۳۶ جو شخص زبردستی سے زنا کرے سزا قید با مشنت یا بے مشنت ہوئی مبعاد برس سے زیادہ نہیں اور ہرگز دو برس سے ہیں اور مستوجب جرمانہ بھی ہوتا *

کسی بت کے آگے بل دیا جاوے اسمیں عمرو
جرم مندرجہ اس دفعہ کے کہا *

۳۵۷ جو شخص کسی عورت یا مرد کو جرا
جاوے اس ارادہ یا احتمال پر کہ اُسکو چر
جانے کے سبب سے اُس پر ضرر شدید پہنچے
یا اُس عورت سے زبردستی سے زنا یا اُس
سے اغلام کرے یا لوندی یا غلام بناوے
اُسکی قید یا مشنت یا بے مشنت ہونی میں
چودہ برس سے زیادہ نہیں اور ہرنز دو برس
کم نہیں اور وہ مستوجب جرمانہ بھی ہوگا *

۳۵۸ جو کوئی مہتمم جہاز کا جان بوجھہ
کسی شخص کو جو کہ بدون پروانہ موافق آئ
کے سرکار کمپنی بہادر کی مملکت سے یا
کسی جگہ جاے کے واسطے جہاز پر چڑھ نہ
سکتا اتر چرھنے دے تو سزا اس مہتمم جہ
کی قید یا مشنت ہوگی اور ہر ایک ایہ
چرھنے والے کے سبب سے مہتمم جہاز کی مبعاد قہ
ایک ایک مہینے سے زیادہ نہیں ہو سکتی ہ
یا جرمانہ دو دو سے روپے سے زیادہ نہیں
دونو *

ذکر زبردستی سے زنا کرنے کا

۳۵۹ جو کوئی ان پانچ حالتوں میں سے ایک
حالت میں کسی عورت سے زنا کرے اُسکی
نسبت یہہ کہا جاتا ہے کہ اُس سے ز
زبردستی سے کی مگر قسم استثنا ذیل میں
جرم زبردستی زنا کا نہیں ہوتا *

پہلی خلاف خواہش عورت کی *
دوسری جب تک کہ وہ بے ہوش ہی ہے
رضامندی اُسکی *

تیسری یا رضامندی اُسکی جب وہ رضامندی
اُسکی قتل یا ضرر بدی کے خوف دیکھتا ہے
سبب سے ہووے *

چوتھی یا رضامندی اُسکی جب کہ مرد

ہو یا جس پر مطابق شرع کے اختیار رضا دینے کا
ہی وہ رضا دے یا اگر اُسکی رضامندی یا نہ
ہے لے جانے والا ایسا جانے کہ وہ رضامندی فریب
یا اخفا سے منزل مقصود کی نسبت یا
س شخص کے سلوک آیندہ کی نسبت پائی گئی
و یہہ کہا جاتا ہے کہ اُسے کمپنی بہادر کی
مملکت ہند سے آدمی کو چرا لے گیا *

جو شخص کسی لڑکے کو کہ جسکی عمر
دہ برس سے کم ہو اُسکے مربی شرعی سے لہجاولے
ر مربی شرعی اپنی خوشی یا صحت عقل
رضامندی یا ایسی رضا پاکر لہجاولے والا جانے
فریب سے یا اخفا سے منزل مقصود کی یا
لوک آیندہ نسبت اُس لڑکے کی رضامندی
مربی کی پائی گئی یا وہ رضامندی اُس
کے کو ضرر پہنچانے کے واسطے لہجاولے والے
اور اُس مربی کی سازش سے ہی تو نسبت
شخص کی یہہ کہا جاتا ہے کہ اُس نے مربی
عی سے لڑکا چرا لے گیا *

۳۶۰ جو شخص کسی آدمی کو چرا لہجاولے
کی سزا قید یا مشنت یا بے مشنت ہوگی
ناد اُسکی سات برس سے زیادہ نہیں اور ہرنز
برس سے کم نہیں اور وہ مستوجب جرمانہ
ہوگا *

۳۶۱ جو شخص کسی آدمی کو چرا لے
اس ارادہ یا احتمال پر کہ اسے چرا لے
سے اُس آدمی کا قتل عمد ہوا سزا
ی جلا وطن دایمی یا قید یا مشنت ہوگی
اد قید دایمی کے واسطے ہوسکتی ہی اور
سات برس سے کم نہیں اور وہ مستوجب جرمانہ
ہوگا *

مثال

عمرو کمپنی بہادر کی مملکت ہند سے زید
چرا لے گیا اس ارادہ یا احتمال پر کہ زید

یا بے مشنت ہوئی مبعاد دو برس سے زیادہ نہیں یا جرمانہ یا دونو *

۳۴۹ جو کوئی کسی شخص کے بہنے ہوئے مال یا جو مال کہ وہ لئے جاتا ہی اس مال کے چور کے ارادہ میں اس شخص پر حملہ کرے سزا اُسکی قید یا مشنت یا بے مشنت ہوئی مبعاد دو برس سے زیادہ نہیں یا جرمانہ یا دونو *

۳۵۰ جو کوئی کسی شخص کو بے جا قید رکھنے کے ارادہ میں اس پر حملہ کرے سزا اُسکی قید یا مشنت یا بے مشنت ہوئی مبعاد ایک برس سے زیادہ نہیں یا جرمانہ ایک ہزار روپہ سے زیادہ نہیں یا دونو *

۳۵۱ جو کوئی کسی شخص پر اس کے دفعۂ سخت چڑھائے سے حملہ کرے سزا اُسکی قید یا مشنت یا بے مشنت ہوئی مبعاد ایک مہینے سے زیادہ نہیں یا جرمانہ دو سو روپہ سے زیادہ نہیں یا دونو *

۳۵۲ جو شخص نمائش حملہ کی کسی پر کرے مگر اس کے دفعۂ سخت چڑھانے سے نہ ہو سزا اس شخص کی قید یا مشنت یا بے مشنت ہوئی مبعاد ایک مہینے سے زیادہ نہیں یا جرمانہ دو سو روپہ سے زیادہ نہیں یا دونو *

ذکر دزدی انسان

۳۴۳ چرائے جانا انسان کو دو قسم پر ہی * ایک یہ کہ کمپنی انٹرنز بہادر کی مملکت ہند سے کسی انسان کو چرا لیا جانا *

دوسری یہ کہ مرنی شرعی سے انسان کو چرائے جانا *

۳۴۴ جو شخص کسی کو کمپنی بہادر کی مملکت ہند کی حدود سے باہر لےجاوے یا کسی مملکت مذکور کی حد سے باہر لےجاوے کا ارادہ کر کے جہاز پر لےجاوے اور اس میں وہ اپنی خوشی سے اور صحت نیت سے اور ثبات عمل سے رضامند

۱ مشنت یا بے مشنت ہوئی مبعاد تین سے زیادہ نہیں یا جرمانہ پانسو روپہ سے نہیں یا دونو *

۳۴ جو شخص قتل عمد کے قصد میں حملہ کرے سزا اُسکی جلا وطن دائمی یا مشنت ہوئی مبعاد دائمی کے واسطے اور ہرز سات برس سے کم نہیں اور مجرم ب جرمانہ بھی ہوا

۳۴ جو شخص لوٹا چرائے جانبکی کوشش میں بر حملہ کرے سزا اُسکی قید یا مشنت مشنت ہوئی لوٹا چرائے جانے سے جو مبعاد کی ہوتی ہی اُسکی آدھی مبعاد ہوئی بڑ جہ مہینے سے کم نہیں مجرم مستوجب بھی ہونا *

۳۴ جو شخص ضرر شدید پہونکاہکی میں کسی پر حملہ کرے مگر اس کے دفعۂ چڑھانے سے نہ ہو سزا اُسکی قید یا بے مشنت ہوئی جو مبعاد قید کی ضرر شدید پہونکاہے سے ہوتی کی ایک تہائی مبعاد ہوئی یا جرمانہ *

۳۴ جو شخص کسی عورت پر زبردستی سے لڑنکی کوشش میں حملہ کرے سزا اُسکی یا مشنت یا بے مشنت ہوئی مبعاد تین سے زیادہ نہیں اور ہرگز جہ مہینے سے مجرم مستوجب جرمانہ بھی ہوا *

۳۴ جو شخص کسی عورت کو جہر نے کا کر کے اس پر حملہ کرے سزا اُسکی قید یا بے مشنت ہوئی مبعاد دو برس سے نہیں یا جرمانہ یا دونو *

۳۴ جو شخص کسی کو حرمت کرنیکا ارادہ اس پر حملہ کرے مگر اس شخص کے دفعۂ چڑھانے سے نہ ہو سزا اُسکی قید یا مشنت

زید کو کوئی ضرر یا خوف یا تصدیعہ پہنچانے
عمرو کو ارادہ ہو تو اُسے حملہ کیا *

۳۴۱ جو شخص کوئی جنبش یا تباری کر
اس ارادہ یا احتمال پر کہ اس جنبش یا تبار
سے جو شخص حاضر ہی وہ سمجھے کہ وہ جنبہ
یا تباری کرنے والا اُس پر حملہ کرے مستعد ہو
تو اُس شخص کی نسبت یہہ کہا جاتا ہے
اُسے حملہ کی نمائش کی *

شرح

صرف باتوں سے نمائش حملہ کی نہیں ہوتی
ہی لیکن اُن سب باتوں سے کہ جس سے
کرنے والے کی جنبش یا تباری پر ایسا ظاہر ہو
کہ اُس جنبش یا تباری سے نمائش حملہ ہوا
جاوے *

مثال

بہلی عمرو نے زید کو مٹی اٹھائی
ارادہ یا احتمال پر کہ اس مٹی سے زید سمجھے
کہ عمرو مجھ پر حملہ کرے مستعد ہی
صورت میں عمرو نے حملہ کی نمائش کی *

دوسری عمرو نے ایک کتھا کے کا دھانہ ٹھوٹا
لہذا اس ارادہ یا احتمال پر کہ زید سمجھے
عمرو مجھ پر حملہ کرے ہر ہی اس صورت
میں عمرو نے حملہ کی نمائش کی *

تیسری عمرو نے ایک چھری اٹھائی زید
کہا کہ ہم تم کو مارنے ارچہ عمرو کی اس بار
سے نمائش حملہ کی کسی صورت پر نہیں ہوتی
ہی اور صرف جنبش بغیر کوئی سبب
نمائش حمایہ کی شاید نہیں ہو سکتی
لیکن یہہ بات ممکن ہی کہ جب کہ وہ جنبہ
کی غرض باتوں سے کہی ہوئی ہو تب وہ جنبہ
نمائش حملہ کی ہو سکتی ہی *

۳۴۲ جو شخص کسی پر حملہ کرے
اسکے دفعۃً سخت چرھا ہے سے نہ تو سزا اس

واسطے اُسے قصداً زید پر سپنہ زوری کی اگر
اجازت زید کی ایسا کہا اس بات کے ارادہ یا
تمال پر کہ اوس سپنہ زوری سے کوئی ضرر
دہشت یا تصدیعہ زید پر پہنچے تو اُسے
ملہ کیا *

پانچویں عمرو نے ایک پتھر پہنکا اس اوادہ یا
تمال پر کہ وہ پتھر زید کو یا اس کے کمرے یا
چیز وہ لئے جاتا ہی اُس پر لئے یا پانی پر نہ
وہ پانی اوجھل کر اُس کو یا اس کے کمرے پر یا
چیز وہ لئے جاتا ہی اُس پر لئے اس صورت میں
روئے زید پر سپنہ زوری کرنے کا قصد کیا اس وہ
پر با خوف یا تصدیعہ پہنچانے ارادہ پر ہے
ازت زید کی سپنہ زوری کی تو اُسے حملہ کیا *

چھٹویں عمرو نے قصداً ایک عورت کی نہایت
رکڑ اٹھایا اس صورت میں عمرو نے عمداً اُس
رت سے سپنہ زوری کی اور اس اُسے ہے اجازت
عورت کی یہہ سپنہ زوری کی اس بات کے
دہ یا احتمال پر کہ اُس سپنہ زوری سے اُس
رت پر کوئی ضرر یا خوف یا تصدیعہ پہنچے
عمرو نے حملہ کیا *

ساتویں زید غسل کرتا تھا عمرو نے اُس غسل
حوض میں پانی کھولنا ہوا جانکر دال دیا
میں عمرو نے قصداً اپنی قوت بدنی سے اُس
ولتے ہوئے پانی کو ایسی حرکت دی کہ وہ
ی زید کو آئے لٹایا اور پانی میں آئے ملا کہ
اس سے زید کو لہذا اس واسطے عمرو نے قصداً زید پر
نہ زوری کی اور اس اُسے ہے اجازت زید کی
د پر یہہ سپنہ زوری کی اس بات کے ارادہ
احتمال پر کہ اس سپنہ زوری سے زید کو
نی ضرر یا خوف یا تصدیعہ پہنچے تو عمرو نے
ملہ کیا *

آٹھویں عمرو نے ہے اجازت زید کی ایک کتے کو
نڈار نے چاہا کہ زید پر حملہ کرے اس میں اگر

ذکر حملوں کا

۳۳۔ اگر کوئی شخص باعث ہو کسی کا یا تغیر یا بندش کسی حرکت کی دوسرے شخص کی یا باعث ہو بہ نسبت چیز کی اس قدر محروم یا تغیر یا بندش حرکت کی کہ جس سے وہ چیز دوسرے بد میں لے یا جو چیز کہ وہ اپنے ہو لے یا لہجائے ہو۔ ہی اسمیں لے یا کسی میں جو کہ اسطور پر رکنا ہو کہ اسکے لئے وس دوسرے کو معلوم ہو تب اس شخص نسبت بہد کیا جاتا ہی نہ اوستے اوس شخص پر سپند زوری کی *

شرط

و شخص باعث اس حرکت یا تغیر یا اس حرکت یا ہی وہ اگر ان تین سے ایک طبع پر باعث اوس حرکت یا تغیر دس اوس حرکت یا ہو *

۱۔ اپنی قوت بدنی سے *
۲۔ اس توتیب پر چیز ریتے سے کہ سے حرکت یا تغیر یا بندش حرکت کی کسی اور حرکت کرے والے کی سے یا کسی دوسرے کی طرف سے وقوع آوے *

۳۔ باعث ہوئے سے کسی جانور کی حرکت پر یا بندش اوستے حرکت کی *

۳۴۔ جو کوئی شخص کسی پر بدوں اجازت عہدا سپند زوری یا سپند زوری کا قصد کوئی حرم کرے لے واسطے ہو یا بات لے ارادہ یا احتمال پر کہ جس پر سپند زوری کرے اوسکو اوس سپند زوری ہوئی ضرر یا دہشت یا تصدیعہ وقوع میں آوے اوس شخص سے نسبت بہد کیا جاتا ہی سے حملہ کیا *

مثال

پہلی ایک دریا پر لنگر لگائے ہوئے کشتی میں زید بیٹھا تھا عمرو نے لنگر کھولا دیا اسصورت سے قصداً کشتی کو جھور دیا اسمیں عمرو عہداً زید کی حرکت کا باعث ہوا اور اوستا باعث ہونا اسصورت سے ہوا کہ اوستے اس طور سے چیز ریتے نہ بدوں کسی اور حرکت کسی آدمی کی طرف سے وہ حرکت واقع ہوئی اسواسطے عمرو نے قصداً زید پر سپند زوری کی اگر لے اجازت زید کی وہ اس کرے کسی جرم کرے لے واسطے ہو یا اس بات لے ارادہ یا احتمال پر ہو کہ اسکی بہد سپند زوری کرنا باعث کوئی نقصان یا دہشت یا تصدیعہ زید یا ہو تو عمرو نے حملہ کیا *

دوسری زید کاری پر جاتا تھا عمرو نے زید پر زوری کو نورا مارا اور پھروں کو جلدی ہائیے ۔ قصداً کیا اسصورت میں عمرو نے جانوروں کی حرکت تغیر کرا لے سے حرکت زید کی تغیر کرا لے یا قصد یا اسواسطے عمرو زید پر سپند زوری کرنا کوئی مسئلہ ہو یا اگر وہ لے اجازت زید کی سپند زوری کرے اس بات لے ارادہ یا احتمال پر کہ اوس سپند زوری سے زید کو کوئی ضرر یا دہشت یا تصدیعہ پہنچے نو اسمیں عمرو نے حملہ کیا *

تیسری زید مالکی میں جاتا تھا عمرو نے زید کو لوٹنے کا ارادہ پر مالکی کا بانس کرے رو کا اسصورت میں عمرو نے زید کی حرکت بندش کی اور بہد اوستے اپنی قوت بدنی سے کیا اسواسطے اوستے زید پر سپند زوری کی اور چونکہ عمرو نے لے اجازت زید کی قصداً کو جرم کرے لے واسطے ایسا کام کیا اسواسطے عمرو نے حملہ کیا *

چوتھی عمرو نے قصداً ایک نلی میں زید کا دھندا اس صورت میں عمرو نے اپنی قوت بدنی سے اپنے بدن کو استدر حرکت دی کہ زید کو ل

۳۳۶ جو کوئی شخص یا وجود واقف ہو ۔
 صدور بروانہ مخلصی قیدی بموجب قانون مجاز
 کے اسکو منہد رکھے سزا اسکی قید یا مشقت
 نے مشقت ہوئی مبعاد تین برس سے زیادہ نہ ہو
 اور ہرز ایک برس سے کم نہ ہو علوہ اس
 مبعاد کے کہ بموجب دفعہ ۱۱۱۱ اس پر ہوسکتا
 ہی اور مجرم مستوجب جرمانہ بھی ہوا *

۳۳۷ جو شخص کسی سے یا اس سے متعلق ہو
 کوئی مال چھین لینے کے واسطے یا مجبور کرے کو
 ایسا بھید لینے کے واسطے کہ جس سے اس مال
 اکتال بچا ہوسکے یا کوئی نام ناجائز یا نام معمو
 کروانے کے واسطے بچا اسکو قید کرے تو سزا اس
 شخص کی قید یا مشقت یا نے مشقت ہر ایک مبعاد
 تین برس سے زیادہ نہیں اور ہرز ایک برس سے
 کم نہیں علوہ اس مبعاد کے جو اوپر کی دفعہ
 دفعوں کی کوئی ایک دفعہ ہے بموجب اس پر ہو
 اور مجرم مستوجب جرمانہ بھی ہوا *

۳۳۸ جو شخص کسی کو بچا قید رکھے اور
 جائے کہ قیدی چیز اسکی جان بچائے یا ضرر
 بدنی سے محفوظ رکھنے کے لیے ضرور ہی اور قصد
 اسکو وہ چیز بدی سزا اسکی قید یا مشقت
 نے مشقت ہوئی مبعاد ایک برس سے زیادہ نہیں
 یا جرمانہ یا دونو *

مثال

زید کی آنکھ معالجتہ طلب ہمیشہ سے ضرور ہو
 عمر نے زید کو بچا قید رکھا اور باوجود جاننے
 اس بات کے کہ اس زید یا معالجتہ نکلا جائے تو
 اسکی آنکھوں کو نصایں مہکی ہی علاج نہ کیا اس پر
 عمر نے جرم مندرجہ اس دفعہ کے کیا اس پر
 اس زید کی آنکھیں جانی رہیں تو عمر کو لازم نام
 نکرے سے زید کی آنکھ نصایں نہ پائی قصد
 باعث ہوا اور اسواسطے مستوجب سزا قصد
 جرم ضرر شدید زید پر پہنچانہا تھا *

وار کے باہر کی طرف نہیں جا سکتا ہی تو
 رہے زید کو بچا قید رکھا *

دوسری جس دیوار کا ذکر اوپر کی مثال میں
 اس دیوار کے ٹوشہ میں ایک دروازہ
 اسکو نہیں بند کیا مگر وہ دروازہ جلد
 پھانسی نہیں پڑتا ہی اور عمر نے زید کو قصداً
 یا سمجھایا کہ زید کا جانا دیوار کے باہر
 کن نہیں اس صورت میں عمر نے زید کو بچا
 رکھا *

تیسری عمر نے ایک مٹان کے دروازوں پر کسی
 آدمی بندوق باندھے ہوئے متعین کیے اور
 د سے کہا کہ اس تم باہر جانپکو قصد کرو
 یہ لوہ تعمیر بندوق چلاؤ گئے اس صورت میں
 نے بچا زید کو قید رکھا *

۳۳۹ جو شخص بچا کسی کو روک رکھے سزا
 ی قید یا مشقت یا نے مشقت ہوئی مبعاد
 سب سے زیادہ نہیں یا جرمانہ یا سو روپیہ
 زیادہ نہیں یا دونو *

۳۴۰ جو شخص بچا کسی کو قید رکھے سزا اسکی
 یا مشقت یا نے مشقت ہوئی مبعاد ایک
 سے زیادہ نہیں یا جرمانہ ایک ہزار روپیہ
 زیادہ نہیں یا دونو *

۳۴۱ جو شخص بچا کسی کو قید رکھے نہیں روز
 واسطے یا زیادہ سزا اسکی قید یا مشقت یا نے
 مشقت ہوئی مبعاد دو برس سے زیادہ نہیں
 جرمانہ یا دونو *

۳۴۲ جو کوئی شخص کسی کو بچا دس روز کے
 قید رکھے یا زیادہ سزا اسکی قید یا مشقت
 نے مشقت ہوئی مبعاد تین برس سے زیادہ
 علوہ تین تین روز بغرض ہر ایک روز اسی
 کے اور ہرز چھ مہینے سے کم نہیں علوہ
 روز بغرض ہر ایک روز اسی قید کے اور مجرم
 موجب جرمانہ بھی ہوا *

شرح

کونی کسی کو روک سکتا ہی اس بات کو سمجھا کے یا حبیبیت میں ایسا نام کرے کہ ایسا جانا وہاں غیر ممکن ہی یا مشکل یا خطر ناک ہی *

مثال

بہلی عمر زد کو جس راستے پر چلنے کا اختیار ہی عمرے ایک دیوار بنا کے اس راستہ کو بند کیا اس صورت میں زد جا نہیں سکتا ہی عمرے پہنچا زد کو روک رکھا *

دوسری عمرے پہنچا اپنی سرکھی بھینس کو سنبھالنے نہیں رکھا اس صورت میں قصداً زد کو اس راستے سے کہ زد کو جانپا اختیار ہی جائے ندیا اسمیں عمرے پہنچا زد کو روک رکھا اور اس بات کو دو سو تہتر دفعہ میں دیکھا جائے *

تیسری عمرے زد کو دروایا کہ اگر تم راستے سے چلو ے تو تمہارے اوپر ایک کتا تھا ہم شش دار دینے ارجہ زد کا اس راستے سے جانپا اختیار ہی سر اس در سے زد اس راستے سے نہیں جاسا اس میں عمرے زد کو پہنچا روک رکھا *

چوتھی جس کتیا ذکر اور کی مثال میں ہی اس وہ کتا حبیبیت میں کتیا ہووے سر عمرے قصداً زد کو سمجھایا کہ وہ کتا کتیا ہی اور اس صورت سے زد کو اسنے راستے میں چلنے سے باز رکھا نو اسمیں عمرے زد کو پہنچا روک رکھا *

۳۳۱ جو شخص پہنچا کسی کو کونی حد میں سے باہر جائے ندے تو اس شخص کی نسبت یہ کہا جاتا ہی کہ اسنے پہنچا اسکو قید رکھا *

مثال

بہلی عمر زد کو ایک دیوار تک مکانے پہر میں جائے دیتا ہی اور اسی مکانے پہر میں قند دیکر بند کر کے رکھا اس صورت میں زد

یا کے سر پر پٹیا اور ضرر شدید زد کو پہنچاے اور شدید زد کو نہ پہنچا اسمیں اسروہ ضرر پہنچتا نہ عمر مستوجب سزائے قید نہ پہنچا دس برس سے زیادہ نہیں اسواسطے اب قید عمر ے بانج برس سے زیادہ نہیں *

دوسری عمرے قوڈ کی ایک کل زد کے سر پہی اس زائدے نا احتمال ہو کہ ضرر زد کو پہنچاے اس ضرر شدید زد کو حبیبیت پہنچتا نہ تو عمر مستوجب سزائے قید بنا مبعاد جودہ برس سے زیادہ نہیں اسواسطے ہر نے دھار والی حمز سے زد کو ضرر شدید یا اس زد کو ضرر شدید نہ پہنچا تو عمر کو قید بھی مبعاد سات برس سے زیادہ

سری عمرے ایک خط ے اندر ایک کسی اپوز باروت رکھ کر خط کو بند کیا اس نا احتمال ہو کہ اس سے کسی شخص کو شدید پہنچاے جب تک عمر ے اسے اس نا رہا تب تک اسنے جرم مندرجہ اس ے نہیں کیا اور جب نہ اسنے وہ خط داک پہنچا اسوقت اسنے جرم مندرجہ اس دفعہ ے اس سے کسی کو ضرر شدید پہنچا تو عمر کو اس میں مبعاد جودہ برس سے زیادہ نہیں لے ایک حمز سے مثل باروت کے ضرر پہنچا لیں اس ضرر شدید کسی کو نہ پہنچا مستوجب سزائے قید ہی مبعاد سات برس لے نہیں *

۳۳۲ پہنچا روکنا اور پہنچا قید کرنا

۳۳۳ جس حد جس شخص کو جانپا اختیار ہووے جو کونی شخص کونی حوت کرے اسے اس نام سے قصداً اسکو جائے سے زد نہی اسی نسبت یہ کہا جاتا ہی ہے پہنچا اسکو روہ ہی *

ہوئی مبالغہ ایک برس سے زیادہ نہیں با جرمانہ
دوہزار روپیہ سے زیادہ نہیں یا دونو *

۳۲۷ جو شخص کوئی نام کرے سے با کوئی
نام کرے سے کسیکو ضرر شدید پہنچاؤ۔ اور
وہ نام کرنا یا وہ نام کرنا کسی نے احتیاط
نا غفلت سے ہوئے کہ معلوم ہو کہ کریموالہ ک
دوسریکی سلامت رہنے پر جیسا کہ لحاظ چاہیے
ایسا نہیں ہی تو اس شخص کو سزاے قید
۱۰ مہنت یا ۱۰ مہنت ہوئی مبالغہ چھ مہنت
سے زیادہ نہیں با جرمانہ ایک ہزار روپیہ سے
زیادہ نہیں یا دونو *

۳۲۸ جس نام کے کرے سے با نام کرے
سے ضرر شدید مطابق دفعہ ۸۸ کے ہوئے اور وہ
نام کرنا یا وہ نام کرنا علوہ اس ضرر شدید
کرنے کوئی اور بھی جرم ہو تو کرے والے
سزاے اس ضرر کی اور اس جرم کی ہو
ہوئی *

۳۲۹ جو شخص کوئی نام کرے با جو نام
اس کو نام کرے وہ کرے اس ارادے با احتمال
پر نہ اس نام کرے سے با اس نام کرے سے
کسیکو ضرر شدید پہنچاؤ اور قصداً نہ ضرر
پہنچانا حرم مندرجہ ۳۲۹ دفعہ ۱۰ نہیں ہو
دوسرا جرم ہو اور یہاں تک کہ وہ نام کرنا
وہ نام کرنا عمل میں نہ ہو نہ اسوقہ
وہ سوجھے کہ یہاں تک وہ نام کرنا یا وہ نام
نام کرنا کسیکو ضرر شدید پہنچاؤ۔ ۱۰ واسطی
کلیت کرنا تو جو مبالغہ قید اس ضرر وقوع
میں ۱۰ سے ۱۰ ہوئے ہی اسکی ۱۰
مبالغہ ہو سکتی ہی ۱۰ مہنت یا ۱۰ مہنت
جرمانہ یا دونو *

مثال

پہلی عمر نے رات کو راد روٹ کر ایک رس
باندھی اس ارادے با احتمال پر نہ زیادہ نا ہو

۳۲۲ جو کوئی شخص عمدہ کسی تیز ہتھیار
دھار یا نوک سے با اک با کوئی نرم کی
چیز سے یا کوئی کھا جا نے والی چیز سے
ولی ارادے والی چیز سے مثلاً باروت کے
ولی ایسی چیز سے کہ جس سے سانس لینا
سکو نالنا با لہو میں ملانا مہلک ہی یا
جانور کے ذریعہ سے ضرر بذنی پہنچاؤ۔ اور
۳۲۳ کے ہو تو اس شخص کی
قید یا مہنت یا ۱۰ مہنت ہوئی مبالغہ
برس سے زیادہ نہیں با جرمانہ یا دونو *

۳۲۴ جو شخص عمدہ کوئی تیز ہتھیار یا دھار
نوک سے با اک با کوئی نرم کی ہوئی
سے با کوئی کھا جا نے والی چیز سے با کوئی
والی چیز سے با کوئی ایسی چیز سے کہ
سے سانس لینا با جس کو ملنا با لہو میں
مہلک ہی با کوئی جانور کے ذریعہ سے
شدید پہنچاؤ۔ اور بموجب دفعہ ۳۲۹ کے
تو اس شخص کو سزاے قید یا مہنت
۱۰ مہنت ہوئی مبالغہ چودہ برس سے زیادہ
اور شریز ایک برس سے کم نہیں اور وہ
حب جرمانہ بھی ہوا *

۳۲۵ جو شخص دفعہ سخت خراب سے عمدہ
بذنی پہنچاؤ۔ مگر جس شخص نے چرانا
چھوڑ کر دوسرے شخص پر قصداً نہ پہنچاؤ۔
۱۰ کہ دوسرے پر پہنچانا ممکن ہی تو
م و سزاے قید یا مہنت یا ۱۰ مہنت
مبالغہ ایک مہنت سے زیادہ نہیں با جرمانہ
روپیہ سے زیادہ نہیں یا دونو *

۳۲۶ جو شخص سبب دفعہ سخت خراب کے
ضرر شدید پہنچاؤ۔ مگر جس شخص نے
۱۰ اسکو چھوڑ کر دوسرے پر قصداً نہ پہنچاؤ۔
۱۰ بجائے کہ دوسرے پر پہنچانا ممکن ہی تو
شخص کو سزاے قید یا مہنت یا ۱۰ مہنت

برس سے زیادہ نہیں یا جرمانہ ایک ہزار روپیہ سے زیادہ نہیں یا دونو *

۳۱۹ جو شخص قصداً ضرر شدید پہنچاؤے
اثر بموجب مضمون ۳۲۴ دفعہ کی نہو سزا اسکی
قید یا مشنت یا بے مشنت ہوگی مبعاد دس
برس سے زیادہ نہیں اور ہرگز چھ مہینے سے کم
نہیں اور وہ مستوجب جرمانہ بھی ہونا *

۳۲۰ جو شخص قتل عمد کی کوشش میں
قصداً ضرر بدنی پہنچاؤے سزا اسکی جلاے وطن
دایمی یا تبدل یا مشنت ہوگی مبعاد قید دایمی
ہوسکتی ہی مگر ہرگز سات برس سے کم نہیں
ہونی اور وہ مستوجب جرمانہ بھی ہونا *

۳۲۱ جو شخص عمداً ضرر بدنی پہنچاؤے
اس نظر سے کہ زخمی سے یا جو کوئی شخص
کہ تعلق زخمی سے رکھتا ہی اس سے کوئی مال
چھین لہوے یا اس نظر سے کہ وہ زخمی کو یا
جو کوئی اس زخمی سے تعلق رکھتا ہی اسکو
مجبور کر کے کوئی ایسا بھید لہوے کہ اس بھید
سے کوئی مال کا ائنتال بچتا ہوسکے یا کوئی نام
ناجائز یا نامعول مجبور کر کے اس سے کراوے تو
سزا اس شخص کی قید یا مشنت ہوگی مبعاد
جودہ برس سے زیادہ نہیں اور ہرگز ایک برس سے
کم نہیں اور وہ مستوجب جرمانہ بھی ہونا *

۳۲۲ جو کوئی شخص عمداً ضرر شدید پہنچاؤے
اس نظر سے کہ کوئی مال چھین لہوے یا زخمی
کو یا کوئی شخص جو زخمی سے تعلق رکھتا ہی
اسکو مجبور کر کے ایسا بھید لہوے کہ اس بھید
سے کوئی مال کا ائنتال بچتا ہوسکے یا کوئی نام
ناجائز یا نامعول اس سے مجبور کر کے کراوے
اس شخص کی سزا جلاے وطن دایمی یا قید
یا مشنت ہوگی کہ بمبعاد دایمی ہوسکتی ہی
مگر ہرگز سات برس سے کم نہو گی اور وہ
مستوجب جرمانہ بھی ہوگا *

۳۱۸ ایسا ضرر بدنی کسیکو پہنچانا کہ اس کو
وزتک درد بدی یا بیماری رہے یا طاقت
کام روزمرہ کی نہ رہے *

۳۱۹ جو کوئی شخص کوئی کام کرے یا جو کام
نہیں کرے مطابق لزوم ہی وہ نہ کرے کسیکو
بھی پہنچائے گی غرض نہ ہو یا یہہ جانکر
اس سے کسیکو ضرر بدنی پہنچانا ممکن
ہے اس نام سے کسیکو ضرر بدنی پہنچا تو
قصداً ضرر بدنی پہنچایا *

۳۲۰ جو کوئی شخص قصداً ضرر بدنی
پہنچائے یا ضرر بدنی جو کہ قصد پہنچانے
یا جانے نہ ایسا ضرر بدنی پہنچانا ممکن
ہے شدید ہو اور وہ ضرر بدنی جو کہ اسنے
یا وہ ضرر شدید ہو ہو اسنے قصداً ضرر شدید
پہنچایا *

شرح

۳۱۸ تک کوئی شخص ضرر شدید نہ پہنچاؤے اور
بہت زیادہ پہنچائے یا نہ کرے یا نہ جانے کہ پہنچانا
ہی تب تک اسنے قصداً ضرر شدید
پہنچایا ہی لیکن جب کہ وہ کسی قسم کا
شدید پہنچانے ارادہ کرے یا یہہ جان
کہ وہ ضرر شدید پہنچانا ممکن ہی اور
بہت کسی اور قسم کا ضرر شدید پہنچایا
ہے قصداً ضرر شدید پہنچایا *

مثال

۳۱۸ زید کا چہرہ دایمی بدوضع کرنے کا ارادہ
یا نہہہ جانکر کہ اس سے دایمی چہرہ بدوضع
میں ہی زید کو ایک ہوسا مارا اس ہوسے
نے سے چہرہ دایمی بدوضع نہوا لیکن وہ
بہتک بیمار رہا اسنے عمر بے قصداً ضرر
پہنچایا *

۳۱۹ جو شخص قصداً ضرر بدنی پہنچاؤے
بجوبہ مضمون ۳۲۴ دفعہ کے نہو سزا اسکی
یا مشنت یا بے مشنت ہوگی مبعاد ایک

یا بے مشنت ہوگی اور وہ مستوجب جرمانہ بھی ہوگا *

ذکر اسقاط حمل

۳۱۲ جو کوئی عورت اپنا حمل قصداً کراوے اور جو کوئی شخص کسی عورت کا حمل قصداً کراوے اور یہ اسقاط نیک بیتی سے عورت کے جان بچانے کے واسطے نہ تو سزا اس عورت کی اور اس شخص کی قید یا مشنت یا بے مشنت ہوگی مگر تین برس سے زیادہ نہیں یا جرمانہ یا دونو *

۳۱۳ اگر کوئی شخص جرم مندرجہ دفعہ ۲ کے کرے اور اسپر عورت نے اپنی خوشی سے اور درستی عدل سے اجازت نہ دی ہو جس نے عورت کے بدن پر ضرر پہنچایا یا پہنکا نے کے قصداً کہا سوائے سزا اسقاط کرانہی سزا اس نے نہ پہنچانہی یا قصد پہنچانہی زیادہ ہوگی *

ذکر ضرر بدنی

۳۱۴ جمیع درد بدنی اور بیماری اور ضعف کو ضرر بدنی کہتے ہیں *

۳۱۵ اقسام ضرر منسل ذیل کو ضرر مندرجہ کہتے ہیں *

پہلا خوجہ بنانا *

دوسرا کسی آدمی کی کوئی ایک آنکھ ہمیشہ کے واسطے اندھی کرنا *

تیسرا کسی آدمی کا کوئی ایک کان ہمیشہ کے واسطے بہرا کرنا *

چوتھا بھتان کسی عضو یا جورا کرنا *

پانچواں زوال یا خلل دماغی طاقت میں کسی عضو یا جور کی لانا *

چھٹواں کسی چہرے کو بدوضع ہمیشہ کے واسطے کرنا *

ساتواں دانتوں کے سوائے اور ہڈیوں کو تورا یا کسی ہڈی کی جور چھرا نا *

۳۰۹ جو شخص کوئی کام کرے یا جو کام کو لازم ہی وہ کرے اس ارادے یا سمجھنے پر ایسی حالتوں میں کہ اگر اس کام کرنے یا وہ لازم کام نہ کرنے سے کوئی مر جاوے تو وہ شخص مجرم قصداً مردم کشی واجب التنبہ کے بنا اور وہ کام کرنا یا وہ لازم کام نہ کرنا یہاں تک کہ اس میں لڑے کہ وہ اس وقت سوچے کہ یہاں تک کہ اس کو مار ڈالنے کے لئے کفایت کرے سزا کی قید یا مشنت یا بے مشنت ہوگی مگر تین برس سے زیادہ نہیں یا جرمانہ یا دونو *

مثال

پہلی زید نے عمر کو بیکسخت چرانا عمر نے زید پر طمانچہ چلایا اور اس حالت میں اگر اس طمانچہ کے صدمہ سے زید مر گیا عمر مجرم قتل شبہ کا ہوگا اس میں عمر نے جرم مندرجہ اس دفعہ کے کہا *

دوسری ایک سستی کے واسطے چپتا تیار ہوا نے اس چپتے کو چلایا اس حالت میں وہ سستی جل کر مر جاوے تو عمر مجرم قتل مردم کشی واجب التنبہ یا اجازت کا ہوا میں عمر نے جرم مندرجہ اس دفعہ کے کہا *

تیسری عمر ایک چور کے پیچھے چلا اور اسپر وق چلائی اس حالت میں اگر اس چور کو مار ڈالا تو وہ جرم قصداً مردم کشی واجب التنبہ کے حفاظت کے ہوا اس میں عمر نے جرم مندرجہ دفعہ کے کہا *

۳۱۰ جو گروہ اپنی معاش کے واسطے مسافروں کو دیکر مار ڈالے تا کہ ان لوگوں کا مال ہاتھ آوے جو کوئی شخص اس گروہ کے شامل یا کہیں شامل تھا اس کو تھگ کہتے ہیں *

۳۱۱ جو کوئی شخص تھگ ہی سزا اس کی وطن دایمی یا حبس دوام یا مشنت

یا حبس دوام یا مشنت ہوگی اور وہ مستوجب جرمانہ بھی ہوگا *

۳۰۷ اگر کوئی شخص اپنے کو ہلاک کرے جسٹس اسکی ہلاکی میں مدد کی ہو سزا اسکی قید یا مشنت یا بے مشنت ہوگی مبعاد چودہ برس سے زیادہ نہیں اور ہرگز دو برس سے کم نہیں وہ مستوجب جرمانہ بھی ہوگا *

۳۰۸ جو کوئی شخص کوئی کام کرے یا جو کام اسکو لازم ہی وہ نکرے اس ارادے یا سمجھنے پر اور ایسی حالت میں کہ اگر وہ کام کرے سے یا وہ کام جو لازم ہی نکرے سے کوئی مرجاؤے تو وہ شخص مجرم قتل عمد کا ہونا اور وہ کام کرنا یا وہ کام جو لازم ہی نکرنا یہاں تک عمل میں لاوے کہ وہ اسوقت سوچلے کہ یہاں تک ہونا کسبکو ماردانے کے لئے کفایت کرے تو اس شخص کی سزا جلاے وطن دایمی یا قید یا مشنت ہوگی مبعاد دایمی ہو سکتی ہے مگر ہرگز سات برس سے کم نہیں اور وہ مستوجب جرمانہ بھی ہوگا *

مثال

پہلی عمر بے زید کو کل کی بندوق سے ماردانے کے ارادہ کرکے ایک بندوق کل کی مول لی یہاں تک عمر کا قصور بموجب اس دفعہ کے نہیں ہوا لیکن جب عمر نے زید کے راستے پر وہ بندوق بھر کر رکھی تب اسنے جرم مطابق اس دفعہ کے کیا *

دوسری عمر نے زید کو زہر سے مارنے کے ارادہ کرکے زہر مول لیا اور عمر کے پاس جو کھا نیکی چیزیں تھیں اسمیں ملا دیا اب تک عمر نے کوئی قصور بموجب اس دفعہ کے نہیں کیا لیکن جب زید کے سامنے عمر نے رکھا یا زید کے نوکر کو زید کے سامنے رکھنے کو دیا تب عمر نے جرم بموجب اس دفعہ کے کیا *

۳۰۹ اگر کوئی شخص کسی کام سے روکے ہوئے ہو کہ اس سے معلوم ہو کہ قاتل نے کسی جان پر جیسا کہ چاہلے ویسا لحاظ نہ کیا یا اسکی قید یا مشنت یا بے مشنت ہوگی دو برس سے زیادہ نہیں یا جرمانہ یا ۳۰ جو کام کرنے سے یا جو لازم کام نکرے سے قتل موافق مضمون دفعہ بالا کی ہوا اگر م کرنے سے یا اس لازم کام نکرے سے سوائے قتل کے کوئی اور جرم ہو سر موافق جرم دفعہ بے نہو یا وہ کام کرنا یا وہ لازم کام قصد کوئی جرم کا ہو تو مجرم کو علاوہ موافق دفعہ بالا کے سزا اس کے ہونے یا نہ ہونے جرم کی بھی ہوگی *

شرح

یہاں حرکت کا جرم حرکت کے قصد کے سے عرف ہو وہاں اگر حرکت خطا کے قصد میں دفعہ مذکورہ بالا وقوع میں آوے تو مجرم کو سزاے مطالب دفعہ بالا کے اس حرکت کی برابر سزا ہوگی ۸ برابر قصد حرکت کے وہ خطا قصد حرکت سے ہوا *

مثال

۳۱۰ ہندہ بر زبردستی زنا کرے کا قصد زنا نہ کی سر خطا موافق ۳۰۴ دفعہ کے نہیں عمر کی مدت قید مطابق جرم قصد یا نہیں ہوگی بلکہ موافق جرم زنا کی عمر مستوجب قید یا مشنت ہی مبعاد ۳۰۴ دفعہ کے نہیں اور دو برس سے کم نہیں ۳۱۱ اگر کوئی لڑکا یا لڑکی بارہ برس سے کم کی کوئی متجنون یا بے ہوش یا کوئی مادرزاد یا کوئی شخص شدہ کی حالت میں و ہلاک کرے جو شخص اسکی ہلاکی میں ہو سزا اسکی بیاسی یا جلاے وطن دایمی

قصداً مردم کشی واجب التتصیر باجارت نہیں
نی ہی عمر نے قتل عمد کہا *

تیسری عمر نے زید کو قریب دیکر کہا کہ تیرے
بل دریا میں مرنے لگی زید نے یہ سنکر اے کو
کہا تو اس میں عمر کے قریب سے جرم
داً مردم کشی واجب التتصیر با اجازت نہیں
سکتا ہی عمر نے قتل عمد کہا *

۲۹۹ قصداً مردم کشی واجب التتصیر قصداً
دم کشی واجب التتصیر براے حفاظت کہا جاتا
جیکہ خود حفاظت کے واسطے کسیکو قصداً
کرنے کا استحقاق ہو مگر ایسے منام میں یعنی
ن قسم کا حملہ مندرج ۷۶ دفعہ میں اور جس
م کی زد یا نقصان ناحق یا دخل سے اجازت
ل سزا ۷۹ دفعہ میں ہی اوس قسم کو
ور کر دوسرے کوئی قسم کا حملہ سے یا زد
نقصان ناحق یا دخل سے اجازت قابل سزا سے
د حفاظتی کے واسطے قتل کرنا جرم نہوے *

مثال

پہلی زید عمر کو کورا مارنے پر مستعد ہوا
ر اسقدر شدت سے نہیں کہ عمر کو ضرر شدید
ہے اور عمر نے طمانچہ اٹھایا سر زید عمر پر
ملہ کرنے سے باز نہیں رہا عمر نے ٹپک نہتی
جانا کہ اگر زید کو نہ مارڈالوں تو اور کوئی
بل نہیں ہی کہ اسکے کورے سے نجات پاؤں
واسطے عمر نے زید کو گولی سے مارڈالا اس
رت میں عمر نے جرم قصداً مردم کشی
ب التتصیر براے حفاظت کے کہا *

دوسری زید عمر کے ٹھورے پر سوار ہوکر چرا
چلا جب تک زید گھوڑا لپکر بھاگ نچاوے با
ت تک وہ گھوڑا بھر نہ ملے تب تک عمر کو
مال کی اپنے سے حفاظت کرنے کا اختیار ہی
ر اس اختیار میں زید کو قتل نہیں کرسکتا ہی
نکہ عمر کو مرنے یا زخمی ہونے کی دہشت

نہیں اس میں عمر زید کے ہاتھ سے مارڈالا
نہ سکا تو گولی سے مارڈالا اس میں عمر نے خود
قصداً مردم کشی واجب التتصیر براے حفاظت
کے کہا *

تیسری زید نے عمر پر حملہ کیا سر جان
دہشت نہیں تھی عمر نے جانسیر کہ ہے قتل
زید کے اپنی حفاظت کر سکتا ہی تو یہی زید
کو مارڈالا اس میں عمر کی حریت جرم ہوتی
ہی اگرچہ جس قسم کا حملہ مندرج ۷۶ دفعہ
کے نہیں ہی اس قسم سے خود حفاظتی کے
واسطے اسکو بالضرر اختیار ہووے عمر نے جرم
قصداً مردم کشی واجب التتصیر با کہا اور و
جرم مردم کشی واجب التتصیر براے حفاظت
کے نہیں ہوتا ہی لیکن بموجب حالات
قتل شبہ یا قتل عمدا ہوا *

۳۰۰ جو شخص قتل عمد کرے سزا اس
بھانسی یا جالے وطن دابھی یا حبس دائم
یا مشنت ہوئی اور وہ مستوجب جرمانہ ہے
ہوا *

۳۰۱ جو شخص قتل شبہ کرے سزا اس
قید یا مشنت یا بے مشنت ہوئی مبعود ہو
برس سے زیادہ نہیں یا جرمانہ یا دونو *

۳۰۲ جو شخص قصداً مردم کشی واجب
التتصیر با اجازت کرے سزا اسکی قید یا مشنت
یا بے مشنت ہوئی مبعود ہووے جس سے زیادہ
نہیں اور ہرز دو برس سے کم نہیں اور وہ مسنوحہ
جرمانہ بھی ہوا *

۳۰۳ جو شخص قصداً مردم کشی واجب التتصیر
براے حفاظت کرے سزا اسکی یا مشنت
یا بے مشنت ہوئی مبعود ہووے برس سے زیادہ
نہیں یا جرمانہ یا دو نو *

۳۰۴ جو شخص کوئی کام کرنے سے یا کو
لازم کام کرنے سے کسیکو مارڈالے اور وہ نام کر

اس طمانحے سے زید کا مرجانا ممکن ہی نہ ہو۔
زید اس طمانحے سے مرہا اسمیں عمر نے قتل
تنبہ کیا *

۲۹۸ قصداً مردم کشی واجب التنبہ قصد
مردم کشی واجب التنبہ با اجازت کہا جا
ہی جبکہ متول کی عمر بارہ برس سے زیاد
ہوے اور اپنی خوشی سے مرے یا مرے ۔
جوہم اے پر لہوے ان شرطوں پر *
یہلی اے مجرم متول کو صریحۃً یا کنایۃً نو
خوف ضرر دکھلا کے اسکو مرے پر راضی کرے *
دوسری اے متول بسبب خرد سالی
عدم درستی عدل یا بے ہوشی یا عالم نشہ
حالت غصہ سے اپنی رضامندی یا حال یا انتہ
کام بچاسکے *

تیسری اے مجرم نجات سے کہ متول فریب
نا کسی امر کے اخلا سے مرے کو راضی ہوا *
چوتھی جب مجرم جا بے کہ کسی بات
متول کا دل بھر جانا ممکن ہی وہ بات منہ
سے مجرم نہ جھباوے *

شرح

قصداً مردم کشی واجب التنبہ قصداً مر
کشی واجب التنبہ با اجازت کہا جاتا
اے متول کو راضی کرے اور وہ اپنی خوشی
اے کو ہلاک کرے مگر قتل عہد نہو *

مثال

یہلی ہندہ ایک عورت بہوہ اپنے شوہر
ش کے ساتھ جل جا بے کو راضی ہوئی
نے جیتا جالیا اسمیں عمر نے جرم قصداً مر
کشی واجب التنبہ با اجازت کہا *

دوسری عمر نے ترغیب دیکر قصداً زید
خود کشی کرائی اور زید کی عمر بارہ برس
کم تھی اسمیں زید کی خرد سالی کی

سہری سے حسب اعتبار اے موافق آئیں
ہو یا کسی شخص سے خود حفاظتی کے
علاق سے نہو

مثال

یہلی عمر نے زید کے چرائے سے غصہ میں آکر
کے بچے خالد کو قصداً قتل کیا یہ قتل قتل
نہیں کہا جاتا ہی مگر قتل عہد *

دوسری عمر کو زید بچاے سے مطابق آئیں
ر کہا اس رفتاری سے عمر کو بڑا بک سخت
آیا اور قصداً زید کو قتل کیا یہ قتل قتل
نہیں ہی مگر قتل عہد *

تیسری عمر نے زید حاکم کے روپرو واہی دی
بے عمر سے کہا نہ تمہاری زبان بندی کی
اپنی بات پر اعتبار نہیں ہی تمہیں جھوٹی
کجیاں ان باتوں پر عمر دفعۃً غصہ میں
زید کو قتل کیا تو یہ قتل قتل شہد نہیں
بلکہ قتل عہد ہی *

چوتھی عمر نے زید سے نا کھینچنے پر مستعد
زید نے راستحفاظ خود حفاظتی کے عمر کو
اس حرکت سے عمر بیک سخت غصہ
آیا زید کو مارا یہ قتل قتل شہد نہیں
مگر قتل عہد *

پانچویں زید نے خالد کو مارا خالد کو اس سے
ن غصہ معلوم ہوا اور عمر اسوقت باس
تھا زید کو مارنے کے واسطے خالد کا غصہ
مگر خالد نے ہانپہ میں ایک چھوڑ دیا
بے اس چھوڑے سے زید کو مارا اسمیں
بے صرف قتل شہد کہا ہو گا مگر عمر نے
عہد کیا *

چھٹویں خالد نے عمر کو دفعۃً سخت چرایا
اس جرا بے سے خالد پر طمانحہ چلایا زید اسکے
ک آرمیں تھا اور عمر کو طمانحہ چلا بے میں
کو قتل کرنا کی غرض نہ تھی یا نجات تھا کہ

ارادے یا احتمال پر کہ زید مارا جاوے خالد کے اس جھاری پر بندوق چلائے کی ترغیب دی اس میں خالد نے بندوق چلائی اور زید مارا گیا اس میں خالد مجرم نہیں ہو سکتا ہی لیکن اگر اس کی بندوق چلانا بے احتیاطی سے ہوا اس کا قصور مطابق دفعہ ۳۰۴ کے شاہد ہو سکتا ہی مگر عمر بے جرم قصداً مردم کشی واجب التنبہر کا کیا *

۲۹۵ قصداً مردم کشی واجب التنبہر قتل عمد کہا جاتا ہی اگر ان تین قسم خفیف میں سے نہو *

پہلی قتل شبہ *

دوسری قصداً مردم کشی واجب التنبہر باجارت * تیسری قصداً مردم کشی واجب التنبہر ہوائے حفاظت *

۲۹۶ کسی شخص نے کوئی حرکت کی اور اس حرکت کرنے میں اس کی غرض کسی کو مار دالنے کی تھی یا جانتا تھا کہ اس حرکت سے کسی شخص کا مرنا ممکن ہی مگر اس حرکت سے جس شخص کو مار دالنے کی غرض نہ تھی یا نہیں جانتا تھا کہ اس حرکت سے اس کا مرنا ممکن ہی وہ شخص مر گیا اس میں جس کو مار دالنے کی غرض تھی اور مرجانیہ احتمال تھا اگر وہ مرجتا اسکے مرنے سے جیسا جرم قصداً مردم کشی واجب التنبہر کا ہوتا ہی یہ بھی ویاہی ہی *

۲۹۷ قصداً مردم کشی واجب التنبہر قتل شبہ اس کو کہتے ہیں کہ کسی نے کسی کو دفعۃً سخت جرایا اور اس نے اس کو بسبب چرائے کے مار دالا *

شرح

سخت چرائے اس کو کہتے ہیں جس چرائے سے غیر تنک مزاج آدمی بشدت غصہ میں آتا ممکن ہو اور وہ مطابق آئین کے کہا گیا نہو یا موافق قانون دیوانی یا فوجداری کے نہو یا کسی

نی کے صدمہ کو برداشت کرو زید نے اسے کہا تو اس میں عمر نے قصداً مردم کشی ب التنبہر کا کیا *

جو تھی عمر نے اس ہی بات کے ارادے یا احتمال عدالت میں جھوٹی گواہی دی کہ میں نے کو قتل کرتے ہوئے دیکھا ہی اور اس زید کا قصور ثابت ہو کر زید کو بھانسی ملی تو اس میں عمر مجرم قصداً مردم کشی ب التنبہر کا ہوا *

بانتھوین زید کو جندل سے رہبری کرنے کے واسطے کو اجرت دیکر منور کیا گیا عمر نے اس ہی کے ارادے یا احتمال پر زید کو جندل میں جھوڑا انچہ ایسا کچھ واقع نہیں ہوا کہ عمر زید جھوڑے سے بری الذمہ ہو سکے مگر زید جھوڑے سے مر گیا اس میں عمر نے جرم قصداً مردم کشی واجب التنبہر کا کیا *

چھتوس ہندہ کو خوراک دینا عمر کو موافق ع نے لازم ہی اور ہندہ کا ایک شہر خوارہ لڑکا عمر نے ہندہ کو خوراک نہ دی اس بات کے ع یا احتمال پر کہ خوراک نہ دینے سے ہندہ ماریہ لیکن ہندہ تو جیتی رہی مگر اب نہ پہنچنے سے دودھ ہندہ کا سوکھ گیا اور اس مرتبہ اگرچہ اس میں عمر نہیں جانتا تھا ہندہ کا ایسا لڑکا موجود ہی مگر عمر نے جرم ا مردم کشی واجب التنبہر کا کیا *

ساتویں عمر نے زید کو پیچھا قید رکھا اور واسطے عمر پر لازم ہوا کہ جو چیز زید جان بچانے کے واسطے ضرور ہی وہ چیز دینا بات کو ۳۳۸ دفعہ میں دیکھا چاہئے عمر نے احتمال پر کہ اگر دوا زید کو نہ دی جاوے مرجاویہ دوا نہیں دی زید مر گیا اس میں عمر جرم قصداً مردم کشی واجب التنبہر کا کیا *

آٹھویں عمر نے جانا کہ زید ایک جھاڑی کی میں ہی مگر خالد یہ نہیں جانتا تھا عمر اس

عمر کو روکا اور اس سے بزدلستانی روپیہ چھین لیتے کے واسطے مستعد ہوا عمر نے نیک بیتی سے جانا نہ زید قزاق ہی اور بہہ نہیں جانا کہ اس زید کو قتل نہ کرے تو بھی لوت سے نفع سکے اس صورت میں زید کو قتل کیا اس میں عمر مجرم نہیں *

باب اتھا رواں

ذکر ضرر و انسان کی ذات کا

ضرر جان کا

۲۴۴ اس کوئی شخص کوئی کام کرے یا وہ کام جو مطابق آئین کے اس پر لازم ہی وہ نہ کرے اس بات کے ارادے یا احتمال پر کہ اس کام کے کرنے سے یا اس لازم کام نہ کرنے سے کسی آدمی کا قتل ہو اور حبسیت میں وہ کام کرے یا وہ لازم کام نہ کرے کسی کو مار دالی تو اس نے جرم قصداً مردم کشی واجب التنبہر کا کیا ہے *

مثال

پہلی عمر نے ایک غار کے منہ کو لکڑی اور پلاس سے چھپا دیا اس بات کے ارادے یا احتمال پر کہ کوئی آدمی اس پر نہ لکڑی کرے اور زید اس کو زمین سخت جان کر قدم رکھتے ہوئے نہ پڑا اور مر گیا اس میں عمر نے جرم قصداً مردم کشی واجب التنبہر کا کیا *

دوسری عمر نے زید کو مار دالنے کے ارادے یا احتمال پر سخت بیماری کی حالت میں خبر پر ضرر دی اور زید خبر سنکے مر گیا تو عمر نے جرم قصداً مردم کشی واجب التنبہر کا کیا *

تیسری عمر نے اس ہی ارادے یا احتمال پر زید سے کہا کہ تم آجکو ہلاک کرو یا دیر تک جان

مثال

پہلی زید نے دیوانی سے عمر کو مار ڈالنے کو ہوا اس میں زید مجرم نہیں ہوتا ہی لیکن عمر کو اختیار خود حفاظتی کا ہی خواہ زید نہ ہو یا نہ ہو ہوتا ہے *

دوسری عمر نے زید کے گھر میں رات کو جانے کا ہی عمر رات کو زید کے گھر میں رہا ہے عمر نے زید کو زیناً جان کر اس پر کیا ایسی غلط فہمی میں زید مجرم نہیں عمر کو اختیار خود حفاظتی کا ہی خواہ نہ ہو یا نہ ہو *

۸۱ کسی کسی آدمی کی حرکت سے حفاظت ضرور ہو اور اس کو قصداً قتل کرنے کا اختیار حفاظت انہی کے حاصل ہی مگر بدون ضرر کسی نے نہ آدمی پر اس کو قتل کر سکتا ہی اس صورت میں خود حفاظتی مستحق سے اس نے نہ آدمی پر ضرر کیا جو کہم اسے نہ کر سکتا ہی *

مثال

پہلی کسی عروہ نے حملہ کیا اور اس عروہ کا اسے قتل کرنے کا تھا عمر بغیر بندوق چلائے اس عروہ پر اپنی حفاظت نہیں کر سکتا ہی بغیر جو کہم ضرر پہنچانے کے ان لوگوں پر جو عروہ کے شامل ہیں بندوق چلائے نہیں ہی اس صورت میں عمر کو بندوق چلانے کی اجازت ہے *

۸۲ جو حرکت بلحاظ خود حفاظتی کے وقوع آئی وہ حرکت داخل جرم نہیں اس شرط کہ جس اعداء سے وہ حرکت کی جاوے کرے والے کو اس اعتماد پر نیک بیتی سے ہو *

مثال

پہلی سے پہلی سے دیوانے کے واسطے راستے پر

قتل کرنے کا با اور کوئی ضرر پہنچانے کا اختیار ہی نہ
وہ مجرم جسے سزا سے یا جسے سزا سے یا جسے سزا سے
اختیار حاصل ہی ان قسموں سے کوئی ایک قسم ہو
بیلی لوت *

دوسری رات کو ننب زنی *
تیسری آدمی کے رہنے کا مکان پر مثل ہر جہ
جہاز آتے لٹانے کا ضرر *

چوتھی دزدی کا نقصان ناحق با ہر میں جس
یہ اجازت اس صورت پر کہ ایسا معلوم ہو کہ
اس دزدی یا نقصان یا ہر میں نہیں ہے۔ مو
یا ضرر شدید وقوع میں آنا ممکن ہی *

۸۰ جس قسم کی دزدی یا نقصان ناحق
یا دخل یہ اجازت قابل سزا ہے یا قصد کرنے
باعث سے اختیار خود حفاظتی کا حاصل ہوتا ہے
اس وہ قسم موافق اوپر کی دفعہ سے نہ ہو اور
اختیار قصداً قتل کرنے کا نہیں ہوتا ہی ہر مجرم
قصداً اور کوئی ضرر پہنچانے کا اختیار حاصل ہے
قواعد ممانعت مندرجہ ۷۵ دفعہ پر نظر کرنے *

۷۱ جب کہ آفت مال پر آنے والی ہی نہ
اسکی حفاظت کے واسطے ایسے سے اختیار حاصل ہے
جب تک لوٹنے والا مال کو لہجہ نسکی با جب نہ
وہ مال بھر نہ ملے تب تک دزدی یا لوت سے
اس مال کو خود حفاظت کرنے کا اختیار حاصل
ہی جب تک مجرم دخل یہ اجازت قابل سم
یا نقصان ناحق مال کے ہے تب تک اس دخل
یا نقصان ناحق سے مال کی حفاظت کرنے کا اختیار
حاصل ہے جب تک رائے ننب زنی کو
بہر میں ہے اجازت ہے تب تک اس ننب زنی
سے مال کو حفاظت کرنے کا اختیار حاصل ہی *

۸۲ خورد سالی یا مادرزاد مجنون یا دیوانہ
یا بے ہوشی یا عالم نشہ یا غلط فہمی کے سبب
سے جو حرکت ہووے وہ حرکت مجرم نہیں ہے
ہرچند کہ اس سے اختیار خود حفاظتی کا حاصل
ہی خواہ وہ مجرم ہو یا نہ *

۷۶ یہی سب قواعد ممانعت کے جو اوپر
دفعہ میں مندرج ہیں ان سب پر نظر کر کے
شخص کو ذات کی حفاظت کے واسطے حملہ
نے والے کو قصداً قتل کرنے کا یا اور کوئی ضرر
نجانے کا اختیار ہی مگر جن حملے سے وہ اختیار
اصل ہی اس سے اس حملے اس طور پر ہوویں *

پہلا اس سے اس حملہ سے ایسا معلوم ہو کہ اگر
بلہ کرنے والا قتل نہ کیا جاوے تو وہ مارا لپٹا *
دوسرا اس سے اس حملہ سے ایسا معلوم ہو کہ اگر
بلہ کرنے والا قتل نہ کیا جاوے تو وہ ضرر شدید
نکاحوبا *

تیسرا اگر زبردستی سے زنا کرنے کے واسطے
بلہ ہو *

چوتھا اگر اغلام کے واسطے حملہ ہو *
پانچواں اگر لڑکے چرا لہجہ کے واسطے حملہ ہو *
چھٹھا اس سے اس حملہ سے ایسا معلوم ہو کہ اگر
اور ان حالتوں پر یہ بلہ لہجہ قتل کرنا ہو جس
لتوں سے معلوم ہو کہ یہ جا قتل کرنے والے کو
وجہ اس مجموعہ آئین کے سزا ہے قتل ایک
س سے زیادہ ہوگی *

۷۷ جس طرح اوپر کی دفعہ میں مندرج ہی
اس طور پر حملہ نہ ہو تو ذات کی خود
حفاظتی کے استحقاق سے حملہ کرنے والے کو قصداً
قتل کرنے کا کسب کو اختیار نہیں ہوتا ہی مگر
بلے کرنے والے کو اور کوئی ضرر پہنچانے کا اختیار
لیکن قواعد ممانعت مندرجہ دفعہ ۷۶ پر
مکمل ہے *

۷۸ جبکہ آفت ذات پر آنے والی ہو اگرچہ قبل
و کو ب کے ہو تو بھی اختیار خود حفاظتی ذات
حاصل ہی اور وہ اختیار جب تک کہ وہ
ت رہی تب تک نہیں جاتا ہی *

۸۴ جو سب قواعد ممانعت کے بچتر دفعہ
س مندرج ہیں ان سب پر نظر کر کے مال کی
حفاظت خود کرنے میں مجرم کرنے والا کو قصداً

دوسری دزدی یا لوٹ یا نقصان ناخف یا دخل
بے اجازت قابل سزا ہے یا اس دزدی یا لوٹ
یا نقصان ناخف یا دخل بے اجازت قابل سزا ہے
قصہ سے اپنا مال کو یا اور کسی شخص کا مال کو *

۷ کسی سرکاری اہل کار نے کوئی کام کیا اور
وہ کام مطابق آئین کے اس اہل کار سے تعلق ہی
یا کوئی کام اس اہل کار کے حکم سے ہوا اور
مطابق آئین کے ایسا حکم دینا اس اہل کار سے
تعلق ہی اس کام سے بھاتا ذات یا مال کو
خود حفاظتی کے استحقاق سے کسبو اختیار نہیں
ہی اسچہ اس کام کرنے میں یا کام کرنے کے
حکم دینے میں اس اہل کار کا قصور ہووے *

موجب آئین فوجداری کے جہاں وقت ہی
بالش کرنے کا وہاں اختیار خود حفاظتی کا
نہیں رہتا ہی *

خود حفاظتی کے واسطے جسقدر ضرر پہنچا
چاہے اس سے زیادہ ضرر پہنچا کسبو خود
حفاظتی کے استحقاق سے اختیار نہیں ہی *

مثال

سلی زید سرکاری اہل کار کو بموجب آئین کے
ایسا اختیار ہی جسپر اسکا شہد بعضے حرم
نہیں نا ہو اسکو برقرار کرے اور اسنے عداوت سے عمر
کو برقرار کیا حالانکہ اسپر زید کا کچھ متحمل شہد
نا نہیں تھا کہ عمر نے ایسا جرم کیا ہی اسہیں
زید قصور وار ہی مگر چونکہ زید کو مطابق آئین
کے عمر کو برقرار کرے نا اختیار ہی اسواسطے زید
سے خود حفاظت کرنے کا عمر کو اختیار نہیں *

دوسری عمر ایک مرد زور آور ہتھیار بند اور زید
ایک لڑکا بہنا عمر نے رات کو دیکھا کہ زید مبرا
ہر میں سبزی کرتا ہی اور عمر کو معلوم ہوا
کہ بدون قتل کرے زید کے اپنے مال کا
حفاظت کرسکتا ہوں تو بھی زید کو قتل کیا
اسہیں عمر نے اپنے اختیار حفاظت سے زیادتی کی *

تھی عمر زید لڑکے کے ساتھ ایک گھر میں
گھر میں آتے لکے آدمیوں نے لڑکے کے
کے لئے ایک کھلی بچے تھامی اور عمر نے
ہتی سے اس لڑکے کو بھاگنے کے واسطے کھلی
طرف پھینک دیا۔ اگرچہ وہ جانتا تھا کہ
ہی کہ لڑکا مر جاوے اور اس دالہ سے لڑکا
عمر مجرم نہیں *

۷ کسی حرکت سے کوئی ضرر واقع ہو یا
مگر حرکت کرے والے کی غرض تھی یا وہ
تھا کہ وقوع میں آتا ایسے ضرر نا اس
سے ممکن ہی وقوع میں آوے اس امر
پر ایسا کم ہو کہ کوئی شخص غیر تنگ مزاج
۸ مایہ ایسے ضرر کے وقوع سے حرکت
مجرم نہیں ہوتا ہی *

مثال

سلی زید ایک ٹرایڈ کی ساری میں بیٹھا تھا
اس ساری میں آکر بیٹھا اور زید نو ایک
ساری میں ایسا دایا کہ نہایت سی جوت
و لے اس صورت میں اسچہ عمر کی حرکت
۳۱۱ دفعہ کے ہی تو بھی عمر مجرم نہیں
ہی اس واسطے کہ جو ضرر اسکی حرکت سے
ہی وہ ایسا کم ہی نہ غیر تنگ مزاج
۹ مایہ *

دوسری عمر زید نے گھر کا نوکر اسکو ایک خود
کی حاجت ہوئی زید کی سپاہی دوات
قلم دوا یا ہر چند بہ حرکت دزدی میں
ہی مگر عمر مجرم نہیں *

ذکر اختیار خود حفاظتی کا

۷ بچہ ہی دفعہ میں جو سب قواعد ممانعت
درج ہیں ان سب پر نظر کر کے ہر شخص
تیار ہی حفاظت کرے *

سلی کسی حملہ سے اپنی ذات کو یا اور
شخص کی ذات کو *

مثال

پہلی عمر نے لڑکے اے کو بہتری کے واسطے مارا زور سے نہیں مارا عمر مجرم نہیں ہوا *
دوسری عمر نے لڑکے اے کو بہتری کے واسطے کرکھا عمر مجرم نہیں ہوا *

تیسری عمر نے بیک بیتی سے پیاس حفظ سے کہ مبادا قزاق کے ہاتھ نہ پرے قصداً لڑکے کو قتل کیا عمر مجرم ہوتا ہی *

چوتھی عمر نے بیک بیتی سے لڑکے کی بیماری دفع کروانے کے واسطے بے رضامندی کے کی جراحی کروائی اور اس جراحی سے وہ مرنا اچھے عمر جانتا تھا کہ اس جراحی اس لڑکے کا مرنا ممکن ہی سر عمر کو غرض کرنے کی نہ تھی اسمیں عمر مجرم نہیں سطرے کہ عمر کا مطلب اس لڑکے کا جان بچانا اور شدید دفع کرے کا تھا *

پانچویں عمر نے لڑکے کو فائدہ زر کے واسطے دانا اسمیں عمر مجرم ہوا اسواسطے کہ کو ضرر شدید پہنچایا اور اسمیں کچھ جان بچانا اور شدید کا دفع کرنا نہ تھا *

چھٹویں خالد نے بزبردستی ہندہ سے زنا کی ہندہ کا سن بارہ برس سے کم ہی اور اسکا عمر بطمع فائدہ زر ہندہ کی زنا پر جامی تو خالد اور عمر دونو مجرم ہیں *

۷۲ اس عمر ایسی حالت میں ہو کہ اپنی کسی کام کرنے کی اجازت نہ دے سکے یا حالت میں نہ ہو کہ سخت عمل سے رضا سکے اور کوئی اسکا مربی شرعی موجود نہ اس سے اجازت لینا ممکن ہی ان دونو پر اثر زید نے بے اجازت بھی اسکی اروی بیتی کے کوئی کام کہ جس میں اسکی ہو کیا اور اس کام سے اسکو ضرر پہنچے مجرم نہیں ان شرطوں پر *

پہلی قتل عمد یا کوشش قتل عمد کی نہو *

دوسری کرنیوالے کو ایسا معلوم نہو کہ وہ کا جو کرتا ہی اس سے مرنا کسی شخص کا ممکن نہو مگر اس امر میں نہیں کہ اس شخص کا جان بچانا یا ضرر شدید دفع کرے کو ہووے *

تیسری عمداً ضرر بدنی پہنچانے کو نہو یا کوشش ضرر بدنی پہنچانے کو نہو مگر اس امر میں نہو کہ جان بچانے یا ضرر ندنی دفع کرے کو ہووے *

چوتھی بزبردستی زنا کرنے کا یا اغلام کرنے کا کوشش بزبردستی زنا کرنے کا یا اغلام کرنے کا نہو *
پانچویں جو حرکتیں کہ بموجب اس دفع کے مذ ہیں نسبت ان حرکتوں کی قبل یا بعد حاسی نہو

مثال

پہلی زید گھوریسے گرا اور یہ ہوش ہوئے ع جراح نے معلوم کیا کہ زید کی کھوپری کھولنا جاہل عمر نے اپنی بیک بیتی سے اور بہتری زید واسطے زید کے ہوش ہونے کے قبل کھوپری کو اسمیں ارادہ عمر کا قتل کرے زید کا نہ تھا نو عمر مجرم نہیں *

دوسری ایک شہر زید کو اتھا لبیبا عمر بیک بیتی سے زید کو نہیں مارنے کے ارادہ بلکہ زید کو شہر سے بچانے کے واسطے شہر پر نندو جالبی اچھے عمر کو معلوم تھا کہ کوئی سے زید مرنا ممکن ہی اسمیں شہر نے زید کو چھوڑ د اور معلوم ہوا کہ عمر کی کوئی سے زید نہ زخمی ہوا کہ اغلب ہی نہ مرجاوے تو بے عمر مجرم نہیں *

تیسری عمر جراح نے دیکھا کہ ایک لڑکے ایسی چوٹ لپی ہی کہ اس جلدی جراح کی جاوے تو خوف جان ہی اور فرصت اس میں نہ اسکی مربی شرعی سے استمراج نہ جاوے عمر نے اوجہ آہ و نالہ اس لڑکے بیک بیتی سے اسکو بچانے کے لیے جراحی اسمیں عمر مجرم نہیں *

سے نہ تو ان سب جالتوں میں ایسے ضرر پہنچنے سے کرنے والا مجرم نہیں ہوتا *

مثال

زید کو بیماری درد سخت کی ہوئی عمر جراح نے معلوم کیا کہ فلانی جراحی سے ہرچند زید کا خوف جان ہی مگر صورت صحت بھی متصور ہی اور عمر نے زید کو مار ڈالنے کا ارادہ نہیں کیا بلکہ زید کی بہتری کے واسطے عمر نے زید کی جراحی کی اور زید اپنی خوشی سے اور صحت عقل سے راضی ہوا اور یہ رضامندی غلط سمجھا کے نہیں کی اس لئے عمر مجرم نہیں ہوتا *

۷۱ جس شخص کی عمر بارہ برس سے کم ہو یا عمل نادرست ہو اور اسکی مربی شرعی سے یا اس مربی شرعی نے حکم سے کوئی کام اس شخص کی بہتری کے واسطے نہ کیا ہے تو مربی شرعی یا جو شخص اس مربی شرعی کے حکم سے ایسا کام کرے مجرم نہیں ان شرطوں پر *

پہلی قتل عمد یا قصد قتل عمد نہ ہو *

دوسری کرنے والے کو ایسا معلوم نہو کہ وہ کام جو کرتا ہی اس سے مرنا کسی شخص کا ممکن ہی مگر اس امر میں نہیں کہ اُس شخص کا جان بچا نے با ضرر شدید دفع کرنے کو ہووے *

تیسری، عمدہ ضرر شدید پہنچانے کو نہو یا کوشش ضرر شدید پہنچانے کو نہو لیکن اس امر میں نہیں کہ جان بچا نے با ضرر شدید دفع کرنے کو نہو یا ختمہ کرنے کو ہووے *

چوتھی زبردستی زنا کرنے کو یا اغلام کرنے کو نہو یا کوشش زبردستی زنا کرنے کو یا اغلام کرنے کو نہو *

پانچویں جو حرکتیں کہ بموجب اس دفعہ کے متع ہیں ان حرکتوں کی نسبت قبل یا بعد حامی نہوے *

۱۔ کے واسطے قیمت کہی اور قصداً غلط نہ سمجھا نہ کو دانت اکھروانے پر راضی کیا تب عمر کا دانت اکھارا ہر چند ایسی حرکت قصداً بدنی پہنکانے پر سمجھی جاتی ہی مگر مجرم نہیں ہوتا ہی *

۲۔ سری عمر نے زید کو حو بالغ ہی اور صحت اور ثبات عقل رکھتا ہی مسلمان کیا اور زید عمدہ غلط نہ سمجھا کے ختمہ کرنے کو راضی عمر نے زید کا ختمہ کیا اس میں عمر مجرم *

۳۔ سری عمر اور زید نے آپس میں تفریح طبع کے لئے بیٹھنا قبول کیا اس شرط پر کہ ضرر منظور ہی مگر بازی بھیتا نہوے پس اس حسب اقرار آپس کے زید کو مارا عمر مجرم ہوتا ہی *

۴۔ وہی عمر زید کا دوست زید کے نہر زید کی میں تھا اور بدو احازت کسب کی زید کا کاغذ بند خطوط لکھے اور اسی کے "تھد" سے بند کئے ت میں ان عمر اور زید نے درمیان میں صاحب سلامت رہی کہ بموجب راہ اور ہستی کی زید کی چھریں اسطر نف پر تصرف لانا عمر کو اختیار ہی تو اس میں عمر نہیں ہو سکتا ہی *

۵۔ کسی شخص نے کچھ ام تھا اور اس کام سے کو قتل کرنے کے اسکی غرض نہ تھی انر نام سے کسب کو ضرر پہنچنے یا جو ضرر کرنے کے جس ہی واقع ہو یا وہ جانتا ہو نہ اسکا دم پر پہنچنا ممکن ہی اور جسکے فائدے کے نہ کیا نہی ہے وہ کام کیا جاوے اس پر ضرر اور وہ شخص اب اس ضرر یا خطرہ اس میں پرنا صریحہ یا کنایہ انہی خوشی سے ، عقل اور ثبات نفس راضی ہو اور وہ ی قصداً غلط سمجھا نے کرنے کے کہ طرف

موافق آئین حتی النہم اپنے کے اور نیک نہتہ
سے زید کو روبرو حاکموں کے لانے کے واسطے گرفتار کر
اسمیں عمر مجرم نہیں ہوتا ہی *

۴۴ جو لڑکا یا لڑکی کہ عمر اسکی سات برس
سے کم ہو کوئی حرکت کرے وہ مجرم نہیں *

۴۵ سات برس سے زیادہ اور بارہ برس سے کم
کوئی لڑکا یا لڑکی جسکی عقل ایسی درست نہ
کہ نہ اپنا کام سمجھے اور نہ اپنے کام کا انجام سمجھے
اگر کوئی حرکت کرے وہ مجرم نہیں *

۴۶ اگر مادرزاد دیوانہ سے کوئی حرکت ہووے
وہ مجرم نہوتا *

۴۷ اگر کوئی شخص عالم دیوانہ یا بہ ہوش
میں کوئی حرکت کرے وہ مجرم نہیں *

۴۸ اگر کوئی شخص عالم نشہ میں حرکت کرے
مجرم نہیں مگر اس شرط پر کہ کسی نے
اطلاع اسکے یا جبراً اسکو نشہ کی چیز کھلا دی
یا آسنے خود نادانستی سے کھا لی ہووے *

۴۹ کسی شخص نے کوئی حرکت کی
اس حرکت سے کسیکو قتل کرنیکی غرض نہ تھی
اور یہ بھی نہیں جانتا تھا کہ اس حرکت
سے مرنا کسیکا ممکن ہی نہ تھی ایسی حرکت
کچھ ضرر یا جو ضرر کرنے والے کی غرض تھی
جانتا تھا کہ اس حرکت سے ممکن ہی واقع ہو
اور اگر وہ ضرر کسی شخص پر کہ عمر اسکی بارہ برس
سے زیادہ ہو پہنچے اور اگر وہ شخص ضرر یا خط
اس ضرر کا صریحاً یا کثباتاً اپنی خوشی
بصحت عقل اور ثبات نفس اپنے پر واقع ہو
سے راضی ہو اور اسکی رضامندی قصداً
سمجھانے حرکت کرنیوالے کی طرف سے نہوے
ان سب حالتوں میں وہ حرکت کرنیوالا ایسے
واقع ہونیکی سبب سے مجرم نہوتا *

مثال

پہلی عمر دانتوں کے حکیم نے زید سے کہ بالغ
اور صحت عقل اور ثبات نفس رکھتا ہی دان

ترجمہ

آئین جدید فوجداری

باب تیسرا اور باب اتھارواں

باب تیسرا

ذکر دعوات استثناء عامہ

۴۲ جو حرکت کوئی شخص مطابق آئین
کرے یا نیک نہتہ سے سمجھے کہ مطابق آئین
کرتا ہی وہ حرکت جرم نہیں ہوتی ہی *

مثال

پہلی عمر ایک سپاہی نے اپنے سردار کے
نام سے اور موافق آئین کے آدمیوں کی بہرہ بر
دوق جلائی اسمیں عمر مجرم نہیں ہوتا ہی *

دوسری عمر ایک عدالت کا ملازم ہی اور اسکو
الد کی گرفتاری کے واسطے عدالت سے حکم ملا اسنے
د کو خالد سمجھے کر گرفتار کیا اور اسکو نیک
نہتہ سے بتیں ہوا کہ زید کو گرفتار کرنے سے حکم
دالت موافق آئین کے بجا لیا ہرچند بعض حالاتوں
میں عمر لائق نالاش دیوانی کے ہو سکتا ہی
مگر اس بات میں عمر مجرم نہیں *

۴۳ جو حرکت کوئی شخص نیک نہتہ سے
حتی النہم اپنے کے اور نیک نہتہ سے مطابق
حالت پائی ہوئی قانون کے کرے وہ حرکت جرم
میں ہوتی ہی *

مثال

عمر کو معلوم ہوا کہ زید کسیکو قتل کرتا ہی
چونکہ قاتلوں کو عین وقت قتل کے گرفتار کرنے کا
ہی آئین کے سبکو اختیار ہی اسواسطہ عمر نے

No. 137.

G. A. BUSHBY Esq. to H. M. ELLIOT Esq.
(Home Department, Legislative, No. 364.)

Sir,

Council Chamber, 1st April 1848.

I AM directed to acknowledge the Receipt of your Letter of the 12th February last, submitting, with Observations, your Translation into the Oordoo Language of Chapters III. and XVIII. of the Penal Code prepared by the Indian Law Commissioners.

2d. The Governor General in Council has read your interesting Letter with great Satisfaction.

3d. I am directed to state that in the Opinion of the Government you have executed the Translation admirably; and his Lordship in Council desires me to express his best Acknowledgments to you for the Task you have performed.

4. The Government has Reason to congratulate itself that it has had your able Services in showing the Facility of translating the Code into a Native Language. Your valuable Remarks on this Subject will be brought especially to the Notice of the Home Authorities, to whom Copies of the Translation will be despatched by the ensuing Mail.

I have, &c.
(Signed) G. A. BUSHBY,
Secretary to the Government of India.

No. 138.

G. A. BUSHBY Esq. to the INDIAN LAW COMMISSIONERS.
(Home Department, Legislative, No. 143.)

Gentlemen,

Council Chamber, 5th February 1848.

I HAVE the Honour to acknowledge the Receipt of your Letter of the 1st instant, submitting your Report on a Scheme of Pleading and Procedure, with Forms of Indictment, adapted to the Provisions of the Penal Code, which will be duly laid before the Governor General in Council.

I have, &c.
(Signed) G. A. BUSHBY,
Secretary to the Government of India.

No. 139.

The GOVERNMENT OF INDIA to the JUDGES of HER MAJESTY'S SUPREME COURT at FORT WILLIAM (No. 314.), FORT ST. GEORGE (No. 273.), and BOMBAY (No. 274.)

(Home Department, Legislative.)

Honourable Sirs,

Fort William, 18th March 1848.

IN continuation of our Letter, dated the 18th September 1847, we have the Honour to transmit for your Consideration the accompanying printed Copies of the Report of the Indian Law Commissioners on a Scheme of Pleading and Procedure.

No 565, Bengal.
821, Madras
822, Bomba
Fort William, 4 C
Fort St. George,
Bombay, do.

We have, &c.
(Signed) DALHOUSIE.
T. H. MADDOCK.
F. MILLETT.
J. H. LITTLER.

No. 140.

The SECRETARY to the GOVERNMENT OF INDIA to the SECRETARIES to GOVERNMENTS OF BENGAL (No. 313.), MADRAS (No. 265.), BOMBAY (No. 266.), and NORTH-WESTERN PROVINCES (No. 267.)

(Home Department, Legislative.)

Sir,

Fort William, 18th March 1848.

IN continuation of my Letter dated the 18th September 1847, I am directed by the Governor General in Council to request that you will submit for the Consideration of the the accompanying printed Copy of the Report of the Indian Law Commissioners on a Scheme of Pleading and Procedure.

2. I am at the same Time directed to transmit to you for Distribution additional printed Copies of the above Report.

I have, &c.

(Signed) G. A. BUSHBY,
Secretary to the Government of India.

Bengal,
Madras,
Bombay,
N. W. Provinces.
Bengal, 200.
Madras, 150.
Bombay, 100.
N. W. P., 150.

No. 141.

The Honourable JUDGES of the SUPREME COURT OF JUDICATURE at FORT WILLIAM in BENGAL to the Right Honourable the GOVERNOR GENERAL of INDIA in COUNCIL.

Right Honourable Lord and Honourable Sirs,

Court House,
23d March 1848.

WE have the Honour to acknowledge the Receipt of your Letter dated the 18th of March instant transmitting Four printed Copies of the Report of the Indian Law Commissioners on the Scheme of Pleading and Procedure; and we beg leave to express our Thanks for the same.

We have, &c.

(Signed) LAWRENCE PEEL.
H. W. SETON.

No. 142.

The Honourable Sir LAWRENCE PEEL Knight, CHIEF JUSTICE of the SUPREME COURT OF JUDICATURE at FORT WILLIAM in BENGAL, to the Right Honourable the GOVERNOR GENERAL of INDIA in COUNCIL.

Right Honourable Lord and Honourable Sirs,

Court House,
26th April 1848.

I HAVE the Honour to submit to your Lordship in Council some Observations on a Report of the Law Commissioners on a Scheme of Pleading and Procedure adapted to the Provisions of the Penal Code, upon which Report your Lordship in Council did me lately the Honour to request my Opinion.

I have also the Honour to forward some Observations on the Penal Code itself, which I wrote recently on a Re-perusal of the Penal Code and the Notes to it.

I have, &c.

(Signed) LAWRENCE PEEL.

No. 143.

EXTRACT from the PROCEEDINGS of the Honourable the PRESIDENT of the COUNCIL of INDIA in COUNCIL in the HOME DEPARTMENT (Legislative), under Date the 18th November 1848.

*The GOVERNMENT of INDIA to the Honourable the JUDGES of HER MAJESTY'S SUPREME COURTS of MADRAS and BOMBAY.

(Home Department, Legislative.)

Honourable Sirs,

Fort William, 18th November 1848.

IN continuation of our Letter, dated the 18th March last, we have the Honour to transmit, for your Consideration, the accompanying printed Copy

Madras, No. 273.
Bombay, No. 274.

Copy of the Observations recorded by Sir Lawrence Peel, Knight, Chief Justice of the Supreme Court at Fort William, on the Indian Penal Code, and on the several Reports which have from Time to Time been made upon that Code.

We have, &c.
(Signed) T. H. MADDOCK.
J. H. LITTLER.
J. LOWES.
J. E. D. BETHUNE.

No. 144.

W. GREY Esq. to the SECRETARIES to the GOVERNMENTS of BENGAL (No. 1,032.),
MADRAS (No. 989.), BOMBAY (No. 988.), and NORTH-WESTERN PROVINCES
(No. 990.)

(Home Department, Legislative.)

Sir,
In continuation of Mr. Secretary Bushby's Letter, dated the 18th March last, I am directed by the President in Council to request that you will submit for the Consideration of the the accompanying printed Copy of the Observations recorded by Sir Lawrence Peel, Knight, Chief Justice of the Supreme Court at Fort William, on the Indian Penal Code.

Bengal,
Madras,
Bombay,
N. W. Provinces

2. I am at the same Time directed to transmit to you, for Distribution, additional printed Copies of the above Report.

Bengal, 200
Madras, 150
Bombay, 100
N. W. P., 150.

I have, &c.
(Signed) W. GREY,
Under Secretary to the Government of India.

No. 145.

MINUTE by the Most Noble the GOVERNOR GENERAL.

1. Draft Act for abolishing Exemption from the Jurisdiction of the East India Company's Criminal Courts.
2. Draft Act declaring the Law as to the Privilege of Her Majesty's European Subjects.
3. Draft Act for Trial by Jury.

Duncra Dak Bungalow, 19th April 1850.
THESE Draft Acts were very fully discussed by the Legislative Council at its Meeting on 10th instant, and the Mode of proceeding with them appeared to be finally determined

upon; but as the Considerations which I set forth in my Letter from the North-west Provinces at the Close of last Year still imperatively require my Presence in that Quarter during the present Year, and as I shall thus be prevented from personally taking Part in the Deliberations of the Council on these Acts, I think it right to record the Reasons by which I am compelled to decline giving my Assent to the Acts as they stand, and the Grounds on which I recommended the Council to enter on a wider Field of Legislation in connexion with and in furtherance of the Objects which the Draft Acts were intended to accomplish.

2. I am bound to say that if I had been aware of the very strong Objections which in my Judgment can be put forward to the passing of the Drafts in their present Form I should have recommended, when my Assent to their Publication was asked, that they should not be printed in the Gazette until the Legislative Council should have further matured the Measures with which I conceive they ought to be accompanied. A very careful Consideration of the Observations offered by the great Legal Authorities in India to whom the Drafts were submitted has subsequently made me aware of Objections which have such Weight in my Mind as to compel me to dissent from the passing of the Acts into Law at the present Time, though I formerly agreed to their Promulgation as Drafts.

3. The Objections to which I have referred are stated in many of the Replies which have been received to the Inquiries circulated by the Council, and most forcibly in the Minutes of Chief Justice Peel, of Mr. Justice Colville, and of Mr. Colvin, Judge of the Sudder Court; and to these Minutes I beg to refer the Members of the Council for a full Statement of the Arguments which I shall here notice very briefly.

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4. As the Law stands at present, British Subjects throughout the Provinces are exempted from the Jurisdiction of the Criminal Courts of the Honourable Company. It is proposed by the Draft Act to do away with this Exemption, and to enact in point of fact that British Subjects who have at present the Privilege of being amenable only to the Criminal Courts at the Presidency and to the English Law shall be brought within the Jurisdiction of the Criminal Courts in the Provinces, and shall be governed by the Criminal Law which is administered in those Courts.

5. I am most clearly of opinion that the Time has come when the Exemption in question ought to be abolished, and that British Subjects should now be brought within the Jurisdiction of Criminal Courts in the Mofussil, as they have long since been brought under the Jurisdiction of the Civil Courts there. But, after an anxious Examination of the Subject, I must declare that I am not prepared to place the British Subject under the Criminal Law which is now administered in those Courts, or to deprive him of his Privilege of being judged by English Law, until we can place him under a Criminal Law equally good, or at all events as good as the Circumstances of India will admit of.

6 This is very far from being the Case at present. The Criminal Law administered in the Mofussil is in substance the Mahometan Law, modified from Time to Time by the Regulations, and expounded by the Decisions of the Sudder Court.

The Law in each Case is now declared by the Mahometan Law Officer of the Court, in the Futwa which he furnishes to the Judge. By the new Draft Act it is intended to abolish the Futwa, and to do away with the Interposition of the Mahometan Law Officers altogether. The Judge will then have to ascertain the Law, and to declare it for himself. But the Body of Mahometan Law, I am informed, does not exist in a collected Form. It is based on the Precepts of the Koran, but is found mainly in the Works of certain recognized and authoritative Commentators written in the Arabic Language, and nowhere existing in our own Tongue.

The Judge's Duty, therefore, will be to find the Law applicable to each Criminal Case brought before him as he best can in the Works of Mahometan Commentators, in the scattered Regulations of the Bengal Presidency, and in the various Dicta of Judges of the Sudder Court.

7. Hitherto the System has not been liable to Objection while its Operation has extended only over the Natives of India. They enjoyed the Benefits of having preserved to them their own Law as we found it, expounded by their own Countrymen, and amended by the Additions and Modifications introduced by our Legislation and the Interpretation of our Officers. The Result has been, that they have had their own Law continued in force, and better administered for them than it ever was before.

8. The Case will be very different indeed when you proceed to introduce the Changes contemplated in the Draft, and make British Subjects in India amenable to the Power and to the Penalties of such a System as that which I believe I have correctly described, according to the Information I have acquired from the Papers before me, and from the Inquiries I have made.

The Judge himself, as I have already shown in Paragraph 6, will hereafter find it difficult to ascertain what is the Criminal Law which it is his Duty to administer. How is the Englishman to know what is the Law under whose Provisions you have placed him? It has no Existence for him; no Man can point it out to him; you can only reply, It is in certain Arabic Books, and in certain Regulations illustrated by Decisions of the Sudder Board.

I must say that I do not think this is a fitting Answer to be given to a British Subject when he asks for the Law under which you have forcibly placed him, while at the same Time you have taken from him the Law of his own Land, under which he has hitherto lived. I think it is the undoubted Right of a British Subject that he should have it in his Power to know the Law to which you subject his Person and his Property; and I feel that until we are in a Condition to meet this Demand at his Hands we have no Right in the Legislative Council to deprive him of the Protection of his own native Law which has heretofore been carefully secured to him.

9. Very probably it might be the Case that, uncouth as the Form of Criminal Law under the Draft Act would be, no positive Injustice would be done, and that

that as Cases would be infrequent, and the Exercise of the Judge's Power would be jealously watched, Justice would substantially be executed. This Probability would form to my Mind no Justification for the Legislative Council, if, depriving British Subjects of their present Privilege, we should place them under an imperfect and patchwork System of Criminal Law, when it is clearly within our Competency and within our Power to provide, without undue Delay, a Body of Law entirely free from such Reproach, and applicable to every Class of the Community alike, whether Mahometans, Hindoos, or Europeans. /

10. It will be perceived that I refer to the Penal Code, prepared expressly by the Law Commission for this Purpose, and now standing ready to our Hand for legislative Consideration and Enactment into Law. The Code was prepared with infinite Labour by Men of Ability and Eminence; it was subject to keen and most searching Criticism; it was reviewed subsequently by the Law Commission, together with the Objections which had been pointed out by learned Men, and the Amendments which had been suggested; and many Years have passed since the Court of Directors conveyed to the Legislative Council their Sanction to the Code being passed into Law in such Form as the Judgment of the Council might determine. The Code is founded on the Principles of the Common Law of England; it is imbued with its Spirit; and being further moulded so as to meet the peculiar Circumstances and Customs of the Population of our Indian Possessions, no reasonable or just Exception can be taken to it by any One of the several Classes, whether European or Native, who will come under its Provisions.

11. Wherefore I am of opinion that it is the Duty of the Legislative Council at once to enter on the Consideration of the Code of Criminal Law which was prepared expressly for the Indian Empire, with a view to its being passed into Law so soon as the Council shall have satisfied itself of the Fitness and Sufficiency of its several Provisions.

12. Several other Plans have been suggested, all of which I humbly think are either objectionable or unprofitable.

It has been said, Pass the Draft Acts into Law, and follow that up afterwards by such Legislation as you please.

I should object to this Course, because all the Difficulties would still arise for the limited Period between the passing of the Draft Acts and the Legislation that is to follow which I have dwelt upon as being in their Principle so objectionable. I object to it because I see no Necessity nor any good Reason for passing these Draft Acts in such hot Haste, when a few Months properly employed will amply suffice, as I believe, for enacting the Penal Code, so avoiding altogether the State of Things which I deprecate. And I object to it because I doubt very much whether the Enactment of the Penal Code would be facilitated or expedited by passing the Draft Acts without it in the first instance; and thus British Subjects might be deprived indefinitely of the Rights which I contend ought not to be taken from them without the Substitute to which they are entitled.

2. Mr. Colvin suggests that we should dissect the Digest of the English Criminal Law lately produced, and adopt such Portions of it as are applicable to this Country.

I object to this Expedient, because it would involve nearly as much Labour as dealing with the Penal Code, and because, when your Labours were completed, you would still find many of the Judicial Cases which come before the Courts in India unprovided with any Law to govern them.

3. It is proposed by my Honourable Colleague, Mr. Bethune, to take such Portions of the Digest above mentioned as are applicable to India, and to add to these such Portions of the Regulations and Acts of the Governor General in Council as are applicable, and to constitute these together the Criminal Law which is to be administered in the Company's Criminal Courts.

I object to this Proposal, partly on the same Ground on which I object to Mr. Colvin's of the same Nature, and partly because when the Scheme was completed we should still have an imperfect Body of Law, and should still be contenting ourselves with a Thing of Shreds and Patches unnecessarily.

13. I say unnecessarily, because, having a complete Body of Law in the Penal Code, it is unnecessary as well as inexpedient to limit our Labour to the Preparation of an incomplete Measure, such as would be supplied by any One of the Expedients I have recited and objected to.

14. But why, I ask, are these Alternatives, suggested at all? Why should we not enter on the Consideration of the Penal Code? I conceive the most natural Question to ask would be, Why does anybody think of entering on the Consideration of anything else except the Penal Code? In Paragraph 10. I have shortly sketched its History and its Nature. Prepared at immense Labour and Cost expressly for this Country, applicable in all its Principles and Rules to every Class in the Land, carefully scrutinized, amended, finally approved, and its Enactment sanctioned by the Court of Directors, surely every Circumstance and every Consideration point out the Code as that to which our most laborious Attention should at once be given, in order to provide a satisfactory Body of Criminal Law for the Courts to which we have publicly declared British Subjects ought to be subjected henceforth in the Provinces.

15. The Labour of considering and discussing and determining on the Body of this Code will be very great; but I am very sure that the Members of the Legislative Council will not consider this to be any valid Objection to their engaging in it at once, and persisting in it, at whatever Cost of Time and Exertion, until it is successfully accomplished. I shall take the liberty in another Paragraph of stating what Course I should have recommended if I had remained at the Presidency, and shared in the Discussions on the Code.

16. My Honourable Colleague, Mr. Bethune, has stated that he entertains very strong Objections to the Substance of the Penal Code itself, and expressed a Doubt whether it could or ought to be passed into Law.

This is a very grave Consideration, and raises a Question which can only be decided by the Voice of the Council sitting in its legislative Capacity, and there deliberating and determining.

The Opinion of Mr. Bethune must on Matters of Law be invested with great Authority and Weight in the Deliberations of the Council on such a Subject. I should receive his Opinion with great and unfeigned Deference myself, and my Colleagues I have no Doubt would be actuated by the same Sentiment. But the Legislative Council is bound in this as in every other Act of Legislation to exercise its own Judgment on the Subject Matter before it; and it is quite capable of exercising such a Judgment here.

The Council have not before them the Construction of a Code; a Task impossible for any One but Men of large professional Knowledge and Acquirement. The Code *has* been constructed. It has been considered and revised, again and again. It comes before the Council in a completed Form; in a Form in which the Indian Law Commission appointed for the Aid and Guidance of the Legislative Council in all such Matters has declared it to be fit to become Law. The Legislative Council, therefore, has now only to enter on the Discharge of its proper Functions, by considering the Clauses, and determining upon them, with the Aid, as is usual, of the Judges of the Courts, according to the best of its Judgment.

17. I hope I shall not be supposed to mean that it is necessary that the Penal Code should be passed exactly as it now stands.

What I contend for is, that the Penal Code, as the Code prepared for India, ought now to be taken up; that its Contents should be considered and discussed without Delay, and should be decided upon one Way or the other.

If the Legislative Council should be of opinion that the Code should pass as it stands, and if I should concur with the Council, let it be passed. If Omissions or Additions, Modifications or Alterations of any kind, should be adopted, let the Code be passed thus amended.

18. I cannot conceive it probable that a Code prepared by Men so eminent, judged and approved by so many Men of Learning and Experience, should appear to the Legislative Council so bad in itself, and so incapable of Amendment, that they should advise its Rejection altogether.

If such, however, should be the Case, the Responsibility of the Governor General and the Legislative Council will not be at an end. We have proclaimed to all India, by the Publication of the Draft Acts, that it is our Conviction that British Subjects should be placed within the Jurisdiction of the Mofussil Courts, and that we have resolved so to enact. We cannot, without Discredit, and Loss of public Confidence and Respect, abandon that Resolution. We ought not to abandon it. There is no Discredit in delaying the passing of the Act, for the Purpose of providing every possible Guarantee, by the Enactment

ment of a fitting Criminal Law, for the Liberty and Property of British Subjects when placed under the Operation of the Act. But we must not by relinquishing our Intentions give others Reason to believe that we have been scared from our right Determinations by public Outcry; still less that we have allowed ourselves to be driven from the Enforcement of our conscientious Conviction of what is right and necessary by Difficulties which we encountered in the Way. The Establishment of the same Criminal Law generally in the Indian Empire is a wholesome Measure, and it must now be accomplished.

19. I have made these Observations because in dealing with so large a Question I think it right to advert to it in every Form which it may assume.

I do not contemplate the Probability of the Council forming the Conclusion that the Penal Code should be rejected. I trust that my Honourable Colleague Mr. Bethune, on further Consideration of the Code, will find his Objections not insuperable, and even less firmly rooted than I regretted to perceive they were during our late Discussion. At all events I am confident that he will state no Objection which he does not sincerely believe it to be his Duty to insist upon. And I trust that patient Discussion, and a cordial Desire to co-operate in the Removal of Difficulties, will at an early Date bring the Council to a successful Completion of their arduous Task.

20. To this end I conceive it to be quite necessary that the Arrangements of the Council should be made methodically, and closely adhered to. If I had remained in Calcutta I should have proposed to my Colleagues the following Rules:—

1. That besides the usual Meeting of the Legislative Council, One Day in every Week should be set apart for a Meeting of the Council exclusively for the Consideration of the Penal Code.

2. That Ten Days before each Meeting the Secretary should circulate to each Member a Paper stating the Day on which the Council was to meet, and the Subject then to be discussed, being either a fixed Proposition, or so many Clauses of the Code, as the Case might be. The Secretary should give at the same Time Reference to the Remarks of the Law Commission on the Criticisms upon the Code, and to all official Papers bearing on the Subject.

3. On the Day named the Council should meet, and discuss the Subject proposed. If the Discussion of such Subject be not concluded on that Day, the Discussion should be adjourned to the next or to an early Day, but so as not to interfere with the stated Day set apart in each Week for Discussion of the Code. I think this Provision would help to condense the Discussions, and lead to an earlier Decision on the whole Question.

4. If there is Discussion, there will probably be a Division, when the Secretary should record the Votes; and if the Point is One of Importance, the Record, in a short Minute of the Grounds of the Opinions given by each, would probably be acceptable to those engaged in the Discussion, and certainly useful.

5. On any Subject, or a certain Number of Clauses, say One Chapter (or Division)—I have not the Code here, and do not recollect the exact Designation—being decided by the Council, it would be expedient to send the Result to the Judges of the Supreme Court and Judges of the Sudder Court, for their Opinion.

6. If on these Opinions being received the Council will send them up to me, with the Clauses in question, I will give to them my earliest and best Attention, and return them, with my Opinion, so that my Labours may not be gathered into a Mass at the End, but may keep pace Step by Step with those of the Council, and their Delay at the Close may be avoided.

7. Nothing should be allowed to interfere with the regular Meetings of the Council for this Purpose; and if they really mean to make an Impression on the Work satisfactory to themselves, I recommend to them to sit *not less* than Four Hours each Day of Meeting.

I regret that I should be recommending Rules for Labours in which I am not actively to share myself; but I am sure the Council will feel that, if I had been present, and had advised any Change on the Rules above given for the early Completion of the great Work they are undertaking, it certainly would not have been in the Direction of lessening the Amount of Labour to be bestowed by us upon it.

In conclusion I would observe, that if the Penal Code should become Law I should not shrink from making it applicable to all Courts, the Queen's and the Company's, under certain favourable Circumstances. I should not propose to introduce it into the Supreme Courts, if the Judges should strongly object. But on this Point I do not at all take for granted that the Chief Justice and the Judges would object to the Code being introduced into the Supreme Courts. They may be consulted hereafter; and if the Queen's Judges in Bengal assent to the Proposal, I would extend the Penal Code over all. The Extension of the same Criminal Law over all Persons and in all Courts whatsoever in the Territories of the East India Company would be a great Work.

(Signed) DALHOUSIE.

No. 146.

MINUTE by the Hon. Sir F. CURRIE Bart., dated the 4th May 1850.

Governor General's Minute on the Draft Acts for abolishing Exemption from Jurisdiction of East India Company's Courts and Trial by Jury.

I CONCUR with the Governor General entirely in the Course which his Lordship proposes for our Adoption, though there are some Points put prominently in his Lordship's Minute to which I do not so entirely assent.

I think that after so long a Lapse of Time from the passing of the Act of Parliament 3 & 4 W. 4. c. 85., commonly called the Charter Act, and in consideration of all that has been done and left undone in the Interim, it is better that the Enactment of those Laws and Regulations contemplated in Section 85. of the said Act should precede or be synchronous with the passing of the Acts for giving the local Courts Jurisdiction over Europeans in Criminal Cases.

If we were considering the Question as it stood Sixteen Years ago, I should have strongly advocated the passing of the Law extending the Jurisdiction of the Company's Courts to the Persons of British-born Subjects forthwith, getting on with the Code contemplated in Sections 53. and 85. of the Charter Act as quickly as Circumstances would permit; for I have no doubt that the Legislature, in removing the Restrictions to the Intercourse of Europeans with the Territories of the East India Company, contemplated their being in such Intercourse subject to the same Laws as the Natives of the Country and other Settlers.

But as for a Period of Sixteen Years the Government has omitted to pass an Act making British-born Subjects amenable to local Tribunals in these Territories, and as in the meantime a Code of Laws has been prepared, under the Circumstances described by the Governor General, applicable alike to all Classes of the Community, and ready for Consideration, I think we should not *now* be justified in postponing the Consideration of this Code, with a view to its Enactment, and making the British-born Subjects for the first Time amenable to a System of Laws which it must be admitted is defective, and in some Points unsuited to them.

I thus concur with the Governor General as to the Course which we should now pursue; but I do not agree with his Lordship in the Propriety of the Expression which occurs in several Parts of his Minute, and pervades the Papers of those who oppose the passing of these Acts, viz., that by making the British-born Subjects amenable to the Jurisdiction of the Company's Courts we are *depriving them of a Right of Exemption which they have hitherto always enjoyed*.

Before the passing of the last Charter Act British-born Subjects were interdicted from residing in the Company's Territories at all. They had no legal Right to be there. The Government, if it pleased, might give them a Licence to reside, pending its Pleasure. If this Licence had not been granted, or if it had been (with or without Cause) withdrawn, the British-born Subject, wherever found, was liable to be seized by the local Magistrate, passed on to the Presidency, and then made over to the Town Major, to be sent home by the first Company's Ship. If the British-born Settler transgressed the Law as established by the Government, the Government had no Occasion to try him by its Tribunals. It withdrew his Licence to remain, and summarily ejected him from the Territories.

There

There was not practically much Right of Exemption from Company's Jurisdiction here.

Sections 81. to 86. of the Charter Act of 1833 remove the Prohibition to British-born Subjects residing within certain of the Territories of the East India Company, Section 85. being in these Words: "And whereas the Removal of Restrictions on the Intercourse of Europeans with the said Territories will render it necessary to provide against any Mischiefs or Dangers that may arise therefrom: Be it therefore enacted, That the said Governor General in Council shall and he is hereby required by Laws and Regulations to provide with all convenient Speed for the Protection of the Natives of the said Territories from Insult and Outrage in their Persons, Religions, and Opinions." Thus the Amenability of the British-born Subject to the Laws or Regulations to be made by the Governor General in Council is expressly a Condition of his Permission to reside in the Company's Territories, and these Laws or Regulations the Governor General in Council is *required* to make with all convenient Speed.

Surely there is no Recognition here of any Right of Exemption from the local Courts to be enjoyed by a British-born Subject residing in India.

The Exemption which British Subjects have enjoyed since their Permission to reside has not been of *Right*, but by the Omission of the Government to fulfil the Requirements of the Law.

Nor do I attach so much Importance as is attached in the Governor General's Minute to the Fact that a Part of the Law, to which the Draft Act under Consideration would make the British-born Subject liable, is contained in Law Books and Treatises written in a Tongue with which he is unacquainted. Supposing the Law to be full and complete, and open to no other Objection, how stands the Case with the British-born Subject at present? Who but a professional English Lawyer can pretend to know in every Case what is a statutable Offence, or even an Offence by the Common Law of England? What conflicting Opinions do we often see given by eminent British Jurists in such Cases? It is only within the last few Days that a Despatch has come from the Court with an Opinion of their Standing Counsel in England on the Case of Sir Thomas Turton, in which the Crown Lawyers, the Company's Standing Counsel, the Advocate General, and others, have recorded Opinions, without having come to a Conclusion whether Sir Thomas Turton has committed a Criminal Offence or not.

I have no Veneration for Arabic Law, and I have great Respect for the Law of England; but I doubt if one is more accessible to the People than the other; and I really believe, from the Experience I have had of Futwas in Criminal Trials, that an educated Mahommedan Lawyer will, Nine Times out of Ten, on a Question of great Difficulty, give an Opinion as sound and logical as, and more decided and practical than, an English Barrister.

But it is deemed, and rightly deemed, I think, if it can be avoided, inexpedient to make the British-born in India amenable to Mahommedan Law in Cases not provided for by the Regulations; and the Regulations alone, as they now stand, would not with great probability meet all the Cases which might arise.

This Difficulty can be avoided, for, as the Governor General remarks, a Code of Criminal Law applicable alike to all Classes has been prepared by most able and eminent practical Lawyers, and has been subjected to the strictest Scrutiny by Judicial Officers of all Grades and Classes connected with the Service of Her Majesty and the East India Company. The original Code, with all the Strictures and proposed Emendations of all these Officers, is before us, and I believe that it may, with some considerable Labour doubtless, be put in a State to become Law.

I am ready to enter upon this Labour, as far as my Part goes, at once, and in the Manner suggested by the Governor General. I approve of the *Modus operandi* proposed by his Lordship. What we have to do is to pass this Code, and not to make a new one; and on passing this Criminal Code we should most undoubtedly and unhesitatingly at the same Time pass the Act making British-born Settlers and Residents in India amenable to the local Tribunals.

(Signed) F. CURRIE.

No. 147.

MINUTE by the Honourable J. LOWES, dated the 8th May 1850.

Governor-General's Minute on Draft Act
for abolishing Exemption of British Sub-
jects from the Jurisdiction of the Com-
pany's Courts

I AM still of opinion that we have chosen the greater and not the lesser of Two Evils, and that the proposed Act for abolishing the Exemption of British-born Subjects from the Jurisdiction of the Company's Courts might, with perfect Justice and Propriety, have been passed immediately.

That Men are entitled to know the Law under which they live may in Theory be a sound Maxim, but it can scarcely be said anywhere, least of all in England, to be true in Practice. The Theory that all Men should live under an equal Law rests upon higher Sanctions, and is applied with Care and Diligence in all civilized Countries. Hence I conceive it to be a lesser Evil that an Indigo Planter who has perpetrated a Murder or an Affray should not be able to turn to the precise Section of a Code which defines his Crimes and their Punishment, than that, having committed these Crimes, he should be practically beyond the Reach of any Law whatever, as we know he at present is.

The Intention of the Charter Act is, I think, unequivocal. There the larger Principle is not merged in the less. It enjoins that Laws necessary for the Coercion of British-born Subjects shall be passed so soon as Restriction is removed, and they are allowed to resort to this Country without Let or Question. The Preparation of a Criminal Code is necessarily an Affair of much Time; and I find no Trace of any Design that Englishmen were to spread themselves over this Country as Landlords and Tenants, Buyers and Sellers, Masters and Servants, and that meanwhile, pending the Preparation of the Code described in Section 53, the Eighty-fifth Section of the Act was to remain a dead Letter.

It is much to be regretted, and has been the Source of much Evil and Injustice, in my Opinion, that an Act similar to that now in abeyance was not passed simultaneously with the Promulgation of the Charter Act of 1833. At any given Point of Time since that Date it would, I think, have been a wise and just Measure to have passed such an Act; and I am bound to say, with the greatest possible Deference to the Opinions expressed by the Governor General and Sir F. Currie, that I find in the Papers now before me no valid Grounds for not passing it now.

The next best Thing, no doubt, is to adopt and adapt the Criminal Code prepared by the Law Commissioners. I entirely concur in the Views of the Governor General on this Subject, and shall be delighted to afford all the Assistance in my Power towards carrying out and fulfilling them.

(Signed) J. LOWES.

No. 148.

MINUTE by The Honourable J. E. D. BETHUNE, dated 9th May 1850.

I ACQIESCE rather than concur in the Governor General's Conclusions, as the practical Result must be, that the Acts in question are not to be proceeded with until a Penal Code is ready for passing. There is not much Advantage in explaining in much Detail how and why I differ from his Lordship. My Opinions are expressed almost exactly by what Mr. Lowes has written.

In Justification of myself, however, I must advert to my Minute of 8th June 1849, in which I first proposed to abolish the Impunity of Europeans. I then said, "I think the Reasoning of the Honourable Court's Despatch of 10th December 1834 unanswerable. I was deterred from taking up the Question in the same Spirit only by a Fear that such a Measure might be deemed premature before the passing of the new Penal Code, which is not yet in a State in which I can recommend it for Adoption. With such high Authority already declared in favour of a bolder Course, I am quite ready to propose that we should take up, with some Modifications, the proposed Act of the Commissioners."

In this Despatch of 10th December 1834 the Honourable Court recommended in precise Terms that the Legislature of India should forthwith subject British-born Subjects in all respects, except for Capital Punishment, to the ordinary Tribunals of the Country. That Despatch was written Three Years

Years before the Draft of the Penal Code was completed. I thought myself entitled to conclude thence that the Removal of British Impunity for Crime would be sanctioned by the Home Government whenever we effected it. Had I anticipated that the Want of the Penal Code would have been felt so strongly as a necessary Preliminary by the Governor General, I should not have proposed to ask his Consent for publishing the Acts in question until a Code of some kind was ready to the passing of which I could agree. Much of what the Governor General has written turns on the Abolition of the Mahomedan Law Officer's Futwah.

The Proposition for that Abolition is in the Jury Trial Act, which is a distinct Measure of the Success of which I from the first felt doubtful. If that Clause were suppressed the Sudder Judges would have the same Means of discovering the Law for British-born Subjects which they now have for Hindoos; and I believe with Sir F. Currie that at this Moment the Criminal Law under which an Englishman would have lived had our Acts passed, as proposed, would be more easily known by him than the Criminal Laws to which he is subject can be learned by an Inhabitant of England. I believe also that one is nearly as reasonable as the other. Much Misapprehension prevails as to the present State of Criminal Law in India. It is not so much the Definition of Crimes and Punishments which is faulty as the Form of Procedure, which will remain unaffected by the passing of what is called the Penal Code. Although the Mahomedan Law was originally founded on the Mosaic Doctrine of Retaliation, yet in some respects the English Law might copy from it with Advantage, and in all essential Matter it has been so modified by our Regulations that there is very little in it now repugnant to our Notions of natural Justice, and what is still arbitrary and unsettled in it belongs mainly to that Class of Offences in which I am far from being convinced that a lax Rule is not preferable to a strictly defined one, especially in such a Country as India. But if the Law were far worse than it is, or if there were no Law at all but the good Pleasure of the Judges and Magistrates, I should have thought it a less Evil to place British-born Subjects under the same Rule as the other countless Millions of the Country than to continue their practical Exemption from all Control One Day after I believed it to be in my Power to end it. The best Thing now to be done is to pass the Code as quickly as possible. I have given to it on an Average at least Six Hours daily since the Council at which the Governor General declared his Opinion, which I knew to be decisive of our Course. This is the best Proof I can give that no Labour shall be spared on my Part to bring us up again to the Point at which we lately were.

I had almost forgotten to notice a most important Observation of the Governor General, which seems to advert to our passing the Penal Code for the East India Company's Courts only, and not for the Supreme Courts at the Presidency Towns, if the Judges of those Courts object to it. I hope to bring it into a Shape in which they will not object to it; but at all events I shall think any Code to which they shall urge Objections which ought to be listened to very unfit to be passed for the rest of India.

(Signed) J. E. D. BETHUNE.

No. 149.

MINUTE by Major General the Honourable Sir J. H. LITTLER, G.C.B., dated 10th May 1850.

Act for depriving British Subjects of the Exemptions which they have hitherto possessed from the Jurisdiction of the East India Company's Criminal Courts.

As I have already in Council intimated my Concurrence with the Governor General on the material Point which we have had to consider, namely, whether we should or should not proceed to pass the Act for depriving British Subjects of the Exemption which they have hitherto possessed from the Jurisdiction of the East India Company's Criminal Courts, before we have enacted a new Code of Laws to be administered by those Courts, it is sufficient for me to say briefly, that, although agreeing entirely in the Opinion which has been expressed by other Members of the Council in regard to the Intention of the Act of Parliament passed in 1833, I yet cannot persuade myself

myself that, having omitted for so long a Time to take the Step with respect to European British Subjects which that Act I admit contemplated,—and as, meanwhile, in compliance with another Requisition of the Act relating to the same Matter, a Code of Criminal Law has been completed at an immense Cost of Time and Labour which is applicable in common to all Classes of the Inhabitants of the Country, Europeans as well as well Natives,—I cannot, I say, persuade myself that we should be justified now in putting that Code on one side, even temporarily, when we are discussing the Expediency of making European British Subjects amenable to the Courts of the Country.

Had we been called upon to deal with this Subject as it stood at the Time the present Charter Act was passed, I should unhesitatingly have agreed, not only that we were justified in passing, but that we were required to pass, a Law without Delay which should effectually have attained the Object which is indicated in Section 85 of the Act; for I fully concur in all that Sir Frederick Currie has said in respect to any *original* Right of Exemption from the Company's Courts being possessed by European British Subjects; and I believe, too, that practically they would in all probability have been no more at a loss for a Knowledge of the Law in all essential Points, as administered by those Courts, than they are in respect to a Knowledge of the essential Features of English Law.

I have only, in addition, to signify my entire Acquiescence in the Opinion expressed by Sir F. Currie, that the Act rendering European British Subjects amenable to the Company's Courts should be passed *simultaneously* with the new Criminal Code.

(Signed) J. H. LITTLER.

No 150.

MINUTE by the Honourable J. E. D. BETHUNE, dated 29th April 1850.

Penal Code. ALTHOUGH I turned my Attention to the Indian Penal Code as soon as I received my Appointment, I have not until lately been able to undertake a systematic and continued Examination of it. Many Causes combined to produce this Result. On a cursory Perusal I found so much from which I dissented, either in the Substance or in the Manner of Expression, (much more, I readily admit, in the latter than the former,) and the Labour of recasting it according to my own Opinions of what it ought to be appeared so appalling, and whenever I began to attempt it was so frequently interrupted by the Necessity of attending to the current Business of Legislation, that a great deal of desultory Labour was wasted by me without making much Progress. I felt the Necessity of giving it full and leisurely Consideration before I could be warranted in pronouncing on it a definitive Judgment. It is so artificially put together, and must be viewed so thoroughly as a whole which cannot be altered in One Part without corresponding Changes in almost every other Part, that at One Time I began to be very despondent of being able to make any satisfactory Report upon it to my Colleagues, such as I was requested to do as soon as the Sanction of the Court of Directors was received in India for its being passed, with such Alterations as we might deem expedient. It required the strong Stimulus administered to me by the Governor General's declared Opinion with respect to the Necessity of passing a precise Penal Code, in substitution for the Mahomedan and Regulation Law, simultaneously with the Abolition of the Exemption of British-born Subjects of Her Majesty from the Jurisdiction of the Company's Criminal Courts, to force upon me the steady uninterrupted Application to it which I have given since the Discussion of that Measure in Council. Like many other Difficulties, this also, when fairly grappled with, has proved far less than I anticipated.

I have now made such Progress with the Code that I can venture to promise the President in Council that within a very short Time I shall have the whole ready for his Consideration, with the Alterations which I think indispensable.

It will, however, save much Time in the Discussion of Details if I explain generally the Principles upon which the Amendments I wish to make are grounded; and if the Council agree to those Principles, there will be no Occasion to justify in endless Repetition each Application of them.

The

The first great Change I wish to make is to strike out all the Illustrations from the Law. They may be useful to assist Magistrates and Law Students to understand the Law, but as Laws, they seem to me fraught with Mischief. My Objections to them are precisely the same as those forcibly put by Sir Lawrence Peel in his Remarks on the Code already communicated to Government. I object to them on the same Principle as that on which I would not in Geometry, to the Analogies to which the Commissioners appeal, give Two Definitions of the same Thing. I have had the Advantage of discussing this Question with Mr. Macaulay and Mr. Macleod before I left England, and since I arrived in India with Mr. Millett, Three of the Four Commissioners by whom the Code was prepared. I have heard all that they urge in favour of these Illustrations, and believe that I understand exactly the Use they were meant to serve. I take them to have been intended as so many Boundary Marks, in whatever Direction the Extent of the Law as defined in the general Enactment might appear doubtful, in order to remove that Doubt in those precise Circumstances which constitute the Example, and by Inference in all other Cases more unequivocally within the Scope of the Law. But no Proposition, either in Ethics or Geometry, can stand alone. Inductions and Analogies arise from every One; and new Maxims, of more or less Generality, will inevitably be drawn from them by those who have to administer the Law. At all events, if this is not the Case, it can scarcely be said of the Illustrations with Truth that they will differ from a Collection of decided Cases only in the Circumstance of their being decided, not by the Judges, but by the Legislature.

Of course the Framers of the Code hoped and believed that in such Inductions nothing would appear inconsistent with the main Articles of the Code; but, highly as I think of their Ingenuity and logical Acuteness, I dare not trust them for an infallible Accuracy, which long Experience has shown that our most shrewd and learned Judges have not attained to. Undoubtedly there is great Value in adjudged Cases illustrative of a general Law, which is always better understood by means of them, and, according to our English Practice, in many Instances exists nowhere authoritatively but in Inductions from them. According to English Practice, every such Case, when it is decided, is so far like One of these Illustrations that it is supposed to be in accordance with the general Law, and is so decided because of this Supposition; nevertheless it often happens that more subtle Distinctions are afterwards drawn, and a Case, with all its Consequences, is overruled and set aside as *bad Law* when it is found by incontrovertible Reasoning to lead to Consequences, not thought of at the Time when it was originally decided, which are inconsistent with some settled Principle.

But this cannot be done if the general Principle and the supposed faulty Example are both Laws of equal Authority; and the Courts will be driven to choose between their Interpretation of the Law as given by Maxim, and their Perception of the Inconsistency existing between it and the inevitable Inference from the Law as given by Illustration. We might easily conceive a Criminal Law made for England by enacting that every Case reported, for instance, in "Russell's Reserved Crown Cases," should henceforth be deemed Law. But although every One of these Cases was decided on full Deliberation by all the Judges, and was believed to be good Law when so decided, I am sure that they would themselves protest against legislative Sanction being given to all of them, for fear of latent Inconsistencies which might hereafter be discovered. How much greater would be the Chance of Error if such an Act were passed declaring everything in "Russell's Treatise on Crimes" to be Law, comprising not only all the Cases but also the general Principles which he and his Predecessors in the same kind of Work had gathered from them; yet this would not differ much from what we are now asked to do, except that in the Indian Code the Commissioners, instead of forming the general Maxim by Induction from the Examples, have probably rather deduced the Examples from the general Principle previously laid down by them. But this does not diminish the Chance of Mistake and Inconsistency. In answer to this Objection I may be called on to point out what Illustrations are obvious to it. Sir Lawrence Peel has done this already in some Instances, but I am content to answer, I cannot tell. The Fear of the Possibility of such Consequences is alone enough to make me shrink from introducing this Novelty in Legislation,

and thereby, as it seems to me, giving great additional Difficulty to the Undertaking, already of itself burdensome enough, of framing an unequivocal Penal Code fit for Adoption in every Part of this Empire of India.

It deserves to be noticed that even the Commissioners to whom was committed the heavy Task of examining and reporting upon the Comments made on the Code, on its Publication, appear to have misapprehended the precise Effect of these Illustrations, and the Intention of their Predecessors in the Law Commission in introducing them.

In their First Report they say (p. 17), "We understand the Authors of the Code to have intended their Illustrations to serve precisely the same Purpose as Examples in Grammar. A Judge finding an Illustration plainly at variance with the Terms of the Enactment of the Application of which it is exhibited as an Example would be at liberty to neglect it, and to apply the Law according to his own Judgment of its Meaning."

But speaking soon afterwards of the new Illustrations by which it is proposed that the Legislature shall from Time to Time supply Defects discovered in the Code, and set right erroneous Interpretations of its Meaning by the Courts, they say (p. 22), "Though it is not in Terms so declared, it does indeed appear that the new Illustrations in the successive Editions of the Code are intended to be a Part of the Law, and consequently absolutely binding upon those who have to administer it, and so to differ in Character from the Illustrations in the original Edition. The (new) Illustration is authoritatively to extend or limit or otherwise qualify the Construction; whereas the Illustrations in the original Code are, as has been observed, merely Examples, but Examples clothed with an Authority entitling them to the highest Respect, *though not absolutely binding.*" I apprehend all this Statement to have been written in thorough Mistake of the Meaning of the Compilers of the Code, not only from their own personal Declarations to me, but from the plain, obvious Meaning of their own Words, when first suggesting the Use of these Illustrations. It is clear to me that no such Distinction was intended between the new and the original Illustrations, but that all were meant to be of equal Force, and that the Force of declaratory Law. It is on that Supposition that I am irreconcilably opposed to their Introduction in this Form. As instructive Examples, not having the Force of Law, they may, with some Alteration, be of great Use.

This leads me to notice another Objection which I entertain to these Illustrations, of a different Kind, not by any means of the same Weight and Importance, but deserving, as I think, Consideration.

It is necessary for the Purpose which they are to serve that they should be disposed, as it were, on the very Outskirts and Borders of the Law; and an almost inevitable Consequence of this is, that they accumulate strange and improbable Suppositions, and that many of them are of a trivial and ludicrous Character, the grave Enumeration of which is likely to bring Ridicule upon the new Law; and whether or not such Emotions ought to be excited, I think they are to be deprecated. It is only necessary to read the Code to see to how many of the Illustrations this Remark applies.

As this Question is of so great Importance, it may be well that it should be disposed of before I go on to other Matters.

(Signed) J. E. D. BETHUNE.

No. 151.

MINUTE by Major General the Honourable Sir J. H. LITTLER, G.C.B., dated the 2d May 1850.

I AM inclined to think that this Code, as it now stands, is almost all that can be desired, and will, I doubt not, with the few Alterations contemplated, be considered perfectly so by the Perseverance and indefatigable Exertions of our Honourable Colleague, Mr. Bethune.

I concur with the Legislative Member that many of the Illustrations are trivial, and in some Instances border upon the ridiculous. On a Revision, however, such might be struck out; but I am of opinion that the greatest Part of them may be retained with Advantage.

(Signed) J. H. LITTLER.

No. 152.

MINUTE by the Honourable Sir F. CURRIE Bart.

I AM willing to give up the Illustrations ; i. e., not enact them as Part of the Law. I do not think they are necessary, though published by the Executive Government and circulated with the Code. They will, with some Expurgations, be highly useful as illustrative of the Meaning of the Code.

(Signed) F. CURRIE.

No. 153.

MINUTE by the Honourable J. LOWES, dated the 8th May 1850.

I AM also willing to give up the Illustrations as Part and Parcel of the Code ; but they unquestionably will be most useful in the Form of an Appendix, and may very well be allowed to have the Force of judicial Decisions in illustrating and defining the Law.

(Signed) J. LOWES.

No. 154.

The Marquis of DALHOUSIE K.T. to the GOVERNMENT OF INDIA.

Honourable Sirs,

Saharunpore, 29th April 1850.

IN continuation of the Minute which I had the Honour of transmitting to you the other Day, I have now to request that you would be so good as to cause that Minute, as well as any others which may have been recorded on the Draft Acts for doing away with the Exemption of British Subjects from the Jurisdiction of Criminal Courts in the Provinces, to be transmitted to the Secret Committee by the Mail of the 8th May.

I make this Request, as it is obviously desirable that the Authorities in England should have early and accurate Information of the Acts and Intentions of the Government respecting Drafts of so great Importance as those above mentioned.

I have, &c.

(Signed) DALHOUSIE.

No. 155.

The GOVERNMENT OF INDIA to the Marquis of DALHOUSIE, K.T.

(Home Department, Legislative.)

My Lord,

Fort William, 10th May 1850.

WE had the Honour to receive on the 6th instant your Lordship's Letter from Saharunpore, dated the 29th ultimo ; and as the Mail by the Peninsular and Oriental Company's Steamer was closed on the 3d idem, we propose to forward to the Honourable the Court of Directors a Copy of your Lordship's Minute on the Draft Acts noted on the Margin, and on the Expediency of passing the Penal Code, together with Copies of the Minutes recorded by us on the Subject, by the mid-monthly Overland Mail via Bombay, the Packets for which will be despatched from Calcutta on the 13th instant.

2. We beg to enclose, for your Lordship's Information, Copies of our Minutes and Letter to the Honourable Court.

We have, &c.

(Signed) J. H. LITTLER.

F. CURRIE.

J. LOWES.

J. E. D. BETHUNE.

No. 156.

MINUTE by the Honourable Sir HERBERT MADDOCK, Knight, dated the 8th November 1848.

Penal Code,
Court's Despatch No. 200. of 1848, dated
20th Sept.

BEFORE proceeding to a further Discussion of this important Measure, I propose that we solicit the Expression of our Colleague Mr. Bethune's Opinion on the Penal Code in its Principle and Details.

(Signed) T. H. MADDOCK.

I concur.

(Signed) F. MILLETT.

I concur.

(Signed) J. H. LITTLER.

I cannot object to this.

(Signed) J. E. D. BETHUNE.

No. 157.

MINUTE by the Honourable J. E. D. BETHUNE, dated 10th May 1850.

Penal Code,
No. 2. THE Second general Question which I wish to bring under the Notice of the President in Council connected with the proposed Penal Code is the Degree in which the Discretion of the Criminal Courts is to be fettered in awarding the Amount of Punishment.

The Authors of the Penal Code have everywhere shown great Jealousy of the Judges, and this appears very notably by the Way in which, in the great Majority of Cases, they have been careful to define, not only the greatest but also the least Punishment which can be pronounced for each Offence. I believe this to be in Practice very mischievous.

It may be possible to make great comprehensive Classes of Crimes, and to appropriate to each its corresponding Kind of Punishment;—such are worthy of Death, such of Transportation, such of Imprisonment. Every one familiar with the practical Administration of Justice knows, that in those Systems of Laws which make no Pretence to the same nice Accuracy which is aimed at by the Code even this main Classification is often found in Fault, and that Persons are often put on Trial and found guilty of Offences which according to the Letter belong to one Class, but according to the Mischief which the Law was made to prevent to a very different one. The Chance of this becomes greater as we increase the Fineness of our Distinctions; and an unnecessary Difficulty is thrown in the Way of the due Administration of the Law when the Judge has no Power but by soliciting the Intervention of the Executive Government to diminish the Punishment. This Principle has been long admitted in English Legislature. I have examined, with a view to this Question, the classified List of Punishments for all Offences known to the English Law, in the Appendix to the Fourth Report of the Commissioners on Criminal Law. I find only Three Acts of Parliament since the Accession of Geo. 4. in 1820, that is to say, for the last Thirty Years, which contain a Minimum either of Imprisonment or Fine.

These are 2 & 3 W. 4. c. 16. § 3., by which having Frames or Materials for forging Excise Papers is punishable with Imprisonment for not less than Two Years.

By 3 & 4 W. 4. c. 97. § 12. having forged Stamp Dies is liable to the same Punishment, as are also certain Forgeries formerly punishable with Death, by 7 W. 4. and 1 Vict. c. 84.

It is remarkable, that in the Three Acts which received the Royal Assent on the same Day with the One last quoted (17th July 1837), for amending the Laws and abolishing the Punishment of Death in a numerous Class of Offences against the Person, Burglary, stealing in a Dwelling House, Robbery, and stealing from the Person, no Minimum of Imprisonment is mentioned.

In 1839 this Subject came directly under Debate on the Metropolitan Police Courts Act, 2 & 3 Vict. c. 71., and there by Section 35. it was declared that much Hardship is experienced because sufficient Power is not given to Justices to reduce Penalties and Terms of Imprisonment, and a general Power

was

was given to the Police Magistrates of doing so, in such Manner as they might think fit, with the single Reservation of Breaches of the Revenue Laws, in which Cases the Consent of the Revenue Board was made necessary.

Terms of Transportation are frequently limited not to be less than Seven or Fourteen Years; but that turned on a different Reason. Practically, no one was formerly transported out of England unless he was sentenced for Fourteen Years. If sentenced to a less Term he was invariably sent to the Hulks, where, he was theoretically waiting to be sent abroad, but really was only imprisoned. I believe the Reason of this to have been, that it was not thought worth while, to incur the Expense of sending a Convict to a Penal Settlement unless his Services were turned to account there for a considerable Time.

The Rule laid down for many Years in the Company's Courts has been, that Transportation, when inflicted, is for Life; and although I propose to modify this System, and thereby require a Gradation of Punishment which has been abandoned, I propose in all Cases to connect Transportation for a limited Period with Banishment for Life to begin at the End of the Term of Transportation.

It is quite essential that the greatest Punishment which the Court can inflict should be known; but, unless the Judges are supposed to be in league with the Culprits to defeat the Object of the Law, I see no Disadvantage in enabling them, within the broad Lines of Distinction which are drawn with the least Difficulty, to mitigate Terms of Transportation, or Imprisonment, or the Amount of Fines, according to their Discretion and the Circumstances of each Case.

According to the French Code, Condemnation to the Galleys, or to Deportation corresponding to our Transportation, if not for Life, cannot be for less than Five Years or more than Twenty Years. Within those Limits the Law does not attempt to apportion the Amount of Punishment. Sentences of Imprisonment cannot exceed Five Years, or fall short of Six Days. This last Limit is so low that it would certainly be an Improvement of the Code to remove it altogether. I do not find there any Minimum of Fine. Mr. Livingstone, in the Code for Louisiana, has introduced a *Minimum* as well as a *Maximum* of Punishment. In his Code of Procedure, Chapter XIII. Section 2., is a kind of Exhortation and Explanation to the Judges of the Principles on which they ought to exercise the Discretion vested in them between the Limits marked out for them. I circulate this with my Minute. It contains admirable Advice, though out of Place, as it seems to me, in a Law which ought always to order, and not to advise. It would be very properly embodied in a Circular from the Nizamut Adawlut. It appears to me, that any one who gives due Weight to all that is said in it will be led to agree with me, that, except in some special Cases (and even in them I am doubtful if they ought to be excepted), the Discretion of the Judge ought not to be limited for Mitigation of Punishment. One practical Consequence of Limitation which occurs frequently before Juries, and may be expected sometimes before Judges acting alone, is, that rather than condemn the Prisoner to the inevitable Minimum of Punishment the Court pronounces a Judgment of Acquittal.

(Signed) J. E. D. BETHUNE.

No. 158.

MINUTE by Major General Sir J. H. LITTLER G.C.B., dated 12th May 1850.

THE Rules prescribed in the proposed Penal Code *fix* the Amount of Punishment on all Crimes, leaving little or no discretionary Power with the Judges.

This I consider judicious.

Judges, as well as other People, are apt to hold opposite Opinions, and take different Views of similar Cases.

Their Awards of Punishment, therefore, would be uncertain, and frequently inconsistent.

I am disposed, however, to concur in Mr. Bethune's Proposal, that Transportation, which is at present in the Company's Courts inflicted for Life, should

be modified, and commuted after the Lapse of a certain Period to *Banishment for Life*, to commence at the End of the Term for Transportation.

(Signed) J. H. LITTLER.

No. 159.

• MINUTE by the Honourable Sir F. CURRIE Bart., dated 14th May 1850.

• I AM disposed to concur with Mr. Bethune in the Propriety of leaving the Judge unfettered as to the Minimum of Punishment to be awarded. I do not find that the Authors of the Penal Code, or the Reports on Procedure, have discussed the Point. It is a very important one, and I think we had better consider it in Council on Friday. It will be necessary, I think, to communicate with the Governor General on the Subject.

I should also wish for the Opportunity of discussing the Question of sentencing Asiatics to perpetual Imprisonment, a Part to be passed in Transportation, and the Remainder in Banishment. I do not, I think, quite understand Mr. Bethune's Object.

I think it is better that we should meet to discuss these general Principles than that we should dispose of them in Minutes. The Information or Arguments which each Member would bring in favour of his View would be available to all before a final Opinion was recorded by any one.

(Signed) F. CURRIE.

No. 160.

MINUTE by the Honourable J. LOWIS.

I AM disposed to agree with Mr. Bethune, but shall be glad to discuss the Matter on Friday.

(Signed) J. LOWIS.

No. 161.

MINUTE by the Honourable J. E. D. BETHUNE, dated 15th May 1850.

Penal Code,
No. 3.

I COME next to Matters more difficult of Discussion, and the right Consideration of which requires a more minute Examination of the Details of the Penal Code than those Questions which formed the Subject of my first Two Minutes. I shall have to express myself strongly and irreconcilably opposed to some of the peculiar Characteristics of this Code. But, lest I should be thought to do this in a carping Spirit of Derogation, I will begin by putting on Record my great Admiration of the sound and philosophical Views developed in the Notes. Their Originality, their Clearness, their Force of Reasoning, may fearlessly challenge Comparison with any other Writings of the same Kind. They are admirable Treatises on many important and difficult Principles of Criminal Law, and seem to me to have fixed the Solution of many intricate Questions on a Foundation not easily to be shaken. I entertain no Doubt that they have procured for the Code itself Immunity from much Criticism, to which but for them it would have been exposed. Jurists competent to form an Opinion on such Questions have naturally turned first to this Part of the Work, which professes to give a Defence of the Principles adopted in its Compilation, and seem to me to have been too ready to pass over without Blame Faults in the Enactments in their Eagerness to express Concurrence in the general Doctrines of the Notes, of which they have taken for granted that the Enactments contain the best and fittest Exposition in detail. Assenting, as I do, to most of the Principles embodied in the Notes, and admiring the Clearness and Vigour with which they are expressed and enforced, I seem to come upon a different Language when I turn to the Code itself. It seems to me to be coloured throughout with the Consequences of Two capital Mistakes, as I deem them, which the Commissioners have adopted as the Principles of its Composition.

The first arises out of their great Jealousy of the Judges and of "Judge-made Laws," which has led them to make the Attempt, most unsuccessfully, as I think,

I think, to oust them from the Exercise of all Discretion, by seeking to introduce a kind of mathematical Accuracy into their Definitions and Propositions, of which the Subject is not susceptible.

The other consists in their systematic Abandonment of all common Forms of Expression hitherto known to the Law, and the Invention and Accumulation of awkward and uncouth Terms which they seem to have chosen, as if purposely, in order to make their Code wholly unlike any Laws which have at any Time preceded it. For this I can find no better Reason than the Supposition that they wished it to be in itself all-sufficient, the Alpha and Omega of Penal Legislation, for understanding which nothing else is needed, and that they feared lest Ideas and Prejudices drawn from other Systems of Criminal Jurisprudence might find their Way into the charmed Circle, if they should venture to use any Terms which have been already employed with any Meaning in the slightest Degree different from that which would seem appropriate to them. I am not satisfied with the Apology which they give themselves for the Harshness of their Expressions, "because they could find no other Expressions which would convey their whole Meaning, and no more than their whole Meaning." (Report, Page 6.) I believe that it is in most Cases easier to alter Things than Names, and that it is better in such a Work to use plain, familiar Terms, with slight Modifications of Meaning, than to invent Terms wholly new.

I proceed to illustrate by Examples each of these Defects.

Upon the First Point I can say nothing more severe of their Definitions than they have themselves recorded.

"As our Definitions are framed, it is Theft to dip a Pen in another Man's Ink, Mischief to crumble One of his Wafers, an Assault to cover him with a Cloud of Dust by riding past him, Hurt to incommode him by pressing against him in getting into a Carriage." (Note B, Pages 18, 19.)

I can hardly understand how, after writing, reading, and printing this Passage, the Commissioners did not suspect that there must be something wrong in a System which led them to such monstrous Consequences, and did not frame their Code upon a more frank Admission that the Actions and Motives of Men cannot be defined and classed with the same rigid Accuracy as Squares and Cycloids.

They say truly enough, "There are innumerable Acts, without performing which Men cannot live together in Society; Acts which all Men constantly do and suffer in Turn, yet which differ only in Degree from Crimes. That these Acts ought not to be treated as Crimes is evident, and we think it far better expressly to except them from the Penal Clauses of the Code than to leave it to the Judges to except them in Practice; for if the Code is silent on the Subject the Judges can except these Cases only by resorting to One of Two Practices, which we consider as most pernicious, by making Laws, or by wresting the Language of the Law from its plain Meaning." (Note B, Page 19.)

I think there was another Alternative with regard to many of these Cases, in giving something of a different Turn to the Definitions, so that these innocent Actions could never come to be confounded with Crimes; but it may be allowed that something of the Difficulty would still remain. It has existed in all Times, and was formerly surmounted with quaint and pithy Brevity, by the Maxim, "*De minimis non curat Lex*," "The Law does not concern itself about Trifles." I do not know the Origin of this Aphorism, but it doubtless grew out of the plain Common Sense of Mankind, which, in this Shape, the Commissioners ignore altogether, but to which they are nevertheless forced to have recourse, though they call it in aid in a more inconvenient and perplexing Form. "Clause 73," they say, "is intended to provide for these Cases, which, though from the Imperfection of Language they fall within the Letter of the Penal Laws, are yet not within its Spirit, and are all over the World considered by the Public, and for the most part dealt with by the Tribunals, as innocent." (Note B, Page 18.) Clause 73 is as follows: "Nothing is an Offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any Harm, if that Harm is so slight that no Person of ordinary Sense and Temper would complain of that Harm."

And who is to judge of this model Man? What a Question to leave to a Jury! Is it not plain that whoever has the Decision of it will make his own Sense and Temper the Standard? One Jury of Bengallis, another of Welsh-

men, would strike the Average very differently ; and even the same Man, in different Moods, will form very different Judgments on such a Point.

It is reported that in a recent Case of great Importance to Merchants, One of the most acute and learned Judges of England declared, that he could attach no definite Meaning to the Words "*common Prudence*;" and if we can end in nothing more precise than this, I think it will be better not to blink the Fact, and if anything is to be said on the Subject, to say openly and honestly that "a Magistrate may refuse to commit for Trial, and a Judge to try, any Person charged with any Act which, although an Offence within the Letter of the Law, appears to him to have been done without evil Intent, and to be too slight and trivial to be within the Mischief for Hindrance or Remedy whereof the Law is made." This, or something like this, is what we must come to at last, as a Rule of Practice ; and it seems to me that there is no Advantage, but rather the reverse, in trying to clothe the Enactment with the Appearance of greater Precision, which nevertheless does not really exist. This "ordinary Man" re-appears in more than One Place of the Code, and on the most important Occasions. "Voluntary culpable Homicide," as the Commissioners choose to call it, becomes "Manslaughter," "when committed on grave and sudden Provocation." No Definition is given of what is Provocation, though it seems to stand as much in need of one as "Death," and "Injury," and some other Terms which are duly interpreted ; but we are told that Provocation, whatever it may be, "is designated as 'grave' when it is such as would be likely to move a Person 'of ordinary Temper' to violent Passion," with certain Exceptions not material to the Point I am now discussing. The Commissioners seem to have thought, and in my Opinion rightly, that "violent" is a Term sufficiently well understood by those who speak the English Language not to require precise Definition, although the Place in which it occurs, concerning Homicide, calls for as much careful Discrimination in the Use of Words as any Part of the Code ; yet in order to be consistent they should have defined it, for they have thought it necessary to define "using Force."

"A Person is said to use Force to another if he causes Motion, or Change of Motion, or Cessation of Motion to that other, or if he causes to any Substance such Motion, or Change of Motion, or Cessation of Motion as brings that Substance into contact with any Part of that other's Body, or with anything which that other is wearing or carrying, or with anything so situated that such Contact affects that other's Sense of Feeling, provided this is done by his own bodily Power, or by disposing any Substance in such a Manner that the Motion, or Change or Cessation of Motion, takes place without any further Act on his Part, or on the Part of any other Person, or, thirdly, by inducing any Animal to move, to change its Motion, or to cease to move." Really this elaborate Analysis and Dissection of Ideas which Mankind have managed hitherto to understand well enough for practical Purposes without such subtle Distinctions appears to me more suited to a Philosophical Dictionary than Act of Crimes and Punishments, which to be useful ought to be written so as to be readily understood by those who are to be governed by it, as well as by those who are to administer it. Lord Coke was content to say, "Force, in the Common Law, is most commonly taken in ill Part, and taken for unlawful Violence." (Co. Litt. 1616.) We have already seen that in the Judgment of the Commissioners this is a sufficiently complete Definition, as they do not think that Violence needs any Explanation. And what have they gained by their elaborate Nicety ? This Definition may perhaps approach reasonably near to an accurate Definition of Force (though there is still some Defect in it, in not explaining what is meant by "Power," which Term forms Part of it, and perhaps even "Motion" too, since they will not give us Leave to understand anything without their Help), but it is of wider Application than the Commissioners seem to be aware of, and certainly goes a great deal further than the Courts of Justice have any Occasion to look, or than the People understand, for whom the Law is made. I think I can even bring the Evidence of the Commissioners themselves in condemnation of their own Work. Having defined "using Force" in this Manner, they go on to define an "Assault."

Whoever intentionally uses Force, or attempts to use Force, to any Person, without that Person's Consent, in order to the committing of any Offence, or intending

intending or knowing it to be likely that by such Use of Force he may cause Injury, Fear, or Annoyance to the Person to whom the Force is used, is said to commit an Assault.

In Note M, Page 67, it is said, "A Person who digs a Pit in a public Path, intending that another may fall into it, may cause serious Hurt, and may be justly punished for causing such Hurt; *but he cannot, without extreme Violence to Language, be said to have committed an Assault.*" I agree with the Author of the Note; but let us examine this Case with the Help of the Author of the Definition. The Person who digs the Pit has caused Motion, or Change of Motion, to the Person who falls into it (and also Cessation of Motion when he is stunned at the Bottom of it), and he has done this by disposing the Substances which were in the Pit round the Sides of it so that the Motion, or Change of Motion, or Cessation of Motion takes place without any further Act on his Part, or on the Part of any other Person, for the Motion, which is changed by the Fall, is not a new Act, but already existing within the Terms of the Definition, and he has done this, by Hypothesis, to cause Hurt, that is, Injury, to the Person who falls in; therefore this is an Assault according to the Definition, and according to the Admission of the Annotator extreme Violence is thus done to the Language.

There is indeed no Doubt in my Mind that abusive Words alone, if offensive enough to induce the Person to whom they are addressed to go out of Hearing, constitute an Assault within the Definition; for the Speaker, by his own Power, sets in Motion the Substance of the Air, which, striking on the Hearer's Ears, causes him to move. The Commissioners themselves (Note M, Page 57,) consider speaking as an Act, and offer a long Argument to show that Death wilfully caused by Excitement produced by Words only ought to be punished as Murder. If, then, Death caused by Words is Murder (see Illustration 6, Page 76), Motion caused by Words, though the Cause acts only by an Excitement of the same Kind, is an Assault, being, as I have said, within the literal Definition, and not being even excepted by Clause 73. But by Page 89 "mere Words do not amount to a Show of Assault," much less therefore to an Assault. Thus this excessive Refinement directly leads to Inconsistency.

By Clause 76 the Right of private Defence of the Body against an Assault extends to the voluntary causing of Death, if, among other Cases, the Person assaulted is in reasonable Fear of being grievously hurt, or wrongfully confined, in such Manner as is punishable with more than One Year's Imprisonment.

Let us look further into these Particulars.

By Clause 314 grievous Hurt, besides a Number of other Hurts which are for the most part designated in the English Law as "Maims," includes "such Hurt that the Sufferer is during the Space of Twenty Days in bodily Pain, diseased, or unable to follow his ordinary Pursuits." So, by Clause 331, "wrongful Confinement" is when One is prevented from proceeding beyond certain circumscribing Limits in any Direction in which he has a Right to proceed; and whoever wrongfully confines any Person for Three Days or more is liable to Imprisonment for Two Years. We get, therefore, to the following Proposition: that if a Person is assaulted in such Circumstances as may reasonably cause the Apprehension of being hurt, so as to be in pain for Twenty Days, or of being prevented from proceeding beyond circumscribing Limits in any Direction in which he has a Right to proceed, during the Space of Three Days, he is justified in killing his Assailant.

But if he kills his Assailant, having only reasonable Apprehension of Pain for Nineteen Days, or of being kept within circumscribing Limits for Two Days, he commits "voluntary culpable Homicide in defence," and is liable to Imprisonment for Fourteen Years. Would not this be ludicrous if it were not shocking? The Commissioners compile their Code as if every Human Creature, suddenly exposed to the Fear and Danger of an Assault, were able to predict the Extent of Injury about to be inflicted on him with the infallible Presence of a Mesmeric Clairvoyant, or could act as if he were the heavier of Two Weights, suddenly thrown into a Pair of Scales, and could forthwith let his Hand fall with the unerring Conviction that the Preponderance of Motives was on his Side.

If this is to become Law, the old Threat of beating a Man within an Inch of his Life will change to a Threat of beating him within an Hour of his Twenty Days. And, after all, what is gained by this Affectation of Precision? The

Commissioners say, that "in using vague Expressions a Legislature abdicates its Functions, and resigns the Power of making Law to the Courts of Justice." (Report, Page 7.) But it is plain that there is a Fact on which the Courts of Justice will have to decide in either Case; and after enacting, if that is to be the Law, that a Person assaulted may kill his Assailant if he is in reasonable Fear of grievous Hurt, the Choice lies between leaving it to the Jury in each of these doubtful Cases, whether there was reasonable Fear of grievous Hurt, without attempting to define precisely how much Hurt may be considered grievous, or whether there was reasonable Fear of being put in Pain for Twenty Days or Nineteen. After fixing on that precise Limit, I cannot think that either the Difficulties of the Court are lessened, or the Ends of Justice advanced, by choosing the latter Alternative.

The same Fondness for arithmetical Accuracy is found in several other Parts of the Code. It was seriously proposed to me several Years ago, by One of the First Mathematicians of our Time, that a Law ought to be prepared for taking the Evidence of Witnesses by a Scale of Conviction, for that inasmuch as some Witnesses were able to depose much more positively to the Facts they were called to prove than others, each should be required to state whether his Belief was as One Half, or Three Fourths, or Seven Eighths, or whatever might be the Approach to Certainty in his Mind. I look on some of the precise Phrases of the proposed Penal Code with the same Distrust of their practical Application with which I regarded my Friend's Plan of estimating Testimony. Where Certainty can be properly had, it is very desirable; but it is very mischievous, where no natural Limits can be found, to search out artificial ones, and then to reason and enact concerning our artificial Classes as if they were natural Families. It may perhaps be considered a comparatively trifling Fault, that the Commissioners appear to have systematically discarded every common English Word, if another could be found more unusual, or of more Foreign Origin, to express the same Thing; but I do not so consider it. I attach much Importance to the Use of as much genuine idiomatic English as it is possible to employ. Especially I would keep those Designations of Offences which are familiar to every one; and I consider it far preferable to retain the old Word, with a new Definition, when that appears necessary, than to invent a new one. At the same Time I would make the Definitions of Offences tally as closely as possible with that already recognized in English Law.

I do not think anything is gained by Paraphrases which turn "Manslaughter" into "voluntary culpable Homicide," or "Burglary" into "Lurking House Trespass by Night." I think "wilfully" a better Word than "voluntarily," "Fear" than "Apprehension," "Bribe" than "Gratification;" and so on through a Multitude of Instances. It must not be forgotten that the Commissioners themselves recommend most properly that all Penal Laws hereafter framed "should fit into the Code. Their Language ought to be that of the Code. No Word ought to be used in any other Sense than that in which it is used in the Code." (Report, Page 8.)

This makes it doubly important that the Language of the Code should approach more nearly to that in common Use, and not be constructed upon a Model upon which few but its Inventors could dare or would wish to try to build Sentences. I am not able to understand the Principles which have guided the Commissioners in the Choice of Words which need Definition, and those which do not. The Meaning of the following Words, among others, is defined:—"Injury," "Court of Justice," "Death," "Animal," "Vessel," "Hurt," "fraudulently," "examine," "Coin," "Force," "Assault." The Meaning of the following Words is not defined:—"Definitive Judgment," "covenanted Servant," "secular common Purpose," "cumulative Punishment," "Circumcision," "unnatural Lust," "specific Property," "Mutiny," "Conspiracy," "Breach of Military or Naval Discipline," "malignantly," "wantonly," "personal Influence," "legally competent," "legal Incapacity," "Annoyance," "Quarantine," "Disturbance," "periodical Work," "inveighing," "Disreputable." I do not myself find much Difficulty in attaching precise Meanings to many of these Words; but if they are compared with the previous List of defined Words, it will be difficult not to come to the Conclusion that the Code contains either too many or too few Definitions. It is remarkable, also, that in a Work
aiming

aiming at such minute verbal Accuracy, Expressions should appear of very loose Construction and doubtful Interpretation, such, for instance, as these:—

“ A Person of pure Asiatic Extraction.” (This occurs in a Definition of “ Asiatic Blood.”)

“ The Offender has effected his Retreat with the Property.”

“ A Person of ordinary Sense and Temper.”

“ To give Information in any Quarter.”

“ Relation in the direct ascending or descending Line.” (A purely feudal Phrase.)

“ Refreshments according to the common Usages of Hospitality.”

“ Due Regard for Human Life.”

“ He carries that Act or Omission to such a Length.”

“ In the Service of the Public.”

“ He causes any Imputation to be believed in any Quarter.”

“ He lowers the moral or intellectual Character of a Person.”

“ A State generally considered to be disgraceful.”

“ The Character of a Person, as far as his Character appears in that Conduct.”

“ A Performance which its Author has submitted to the Judgment of the Public.”

All these Expressions, and all such as these, appear to me wholly unsuited to the Gravity and Distinctness which ought to mark a Criminal Law.

These Observations will indicate the Nature and Extent of the Changes I wish to make in the Code.

I have been going through each Chapter of it, and comparing it as I went on with the Act of Crimes and Punishments prepared by the Criminal Law Commissioners. This was published after the Indian Penal Code, and embodies many of its Suggestions. It may be considered, therefore, in the Light of an additional Commentary upon it, and it would be very unwise to reject the Assistance of the very able Men who compiled it, who, moreover, were thoroughly conversant with the practical Administration of the Criminal Law. I have kept the general Classification of Offences adopted by the Indian Commissioners, but I have often altered the Order of the Enactments where it appeared to me that it might be improved.

I have also added many Enactments from the Act of Crimes and Punishments which appear indispensable, but I have hardly omitted anything unless in conformity with the Principles which I have here explained. In a Copy of the Penal Code which I am preparing for the Use of the President in Council, I shall put References opposite each of the Clauses to the Number of the corresponding Article as I have re-arranged it. Where there is no Reference, I shall write an Explanation of the Cause of Omission of that Clause in every Case in which it is not obvious. It will of course be understood that the Articles so referred to are not always identical with the Clause to which they correspond, for although I acquiesce in most of the Principles of the Code other than those to which I have already declared my Dislike, this is not universally the Case. The Language will generally be found different, in the general Substitution of well-known English Words for hard uncouth Neologies.

(Signed) J. E. D. BETHUNE.

No. 162.

MINUTE by Sir J. H. LITTLE G.C.B., dated 20th May 1850.

In framing the new Penal Code, we should, I think, adhere as closely as possible to that of the Law Commissioners.

Some few Modifications may probably, when calmly discussing the Subject, be deemed expedient, but I doubt much whether any real Improvement for practical Purposes will be attained by extensive Alterations.

Certain Expressions and Terms used in the Code in its present Form are objected to, but they seem to be of too trivial a Nature to deserve much Consideration.

Should slight Alterations be deemed essential, there will be no Difficulty in effecting them so as to render the Meaning perfectly intelligible.

The Illustrations are on the whole invaluable, but they may be given in an Appendix, instead of being embodied with the Code, as at present.

(Signed) J. H. LITTLER.

No. 163.

MINUTE by the Honourable Sir F. CURRIE Bart., dated the 20th May 1850.

I do not concur with Mr. Bethune in his sweeping Condemnation of the Phræscology of the Code. There is doubtless an Attempt at Precision of Definition which is not always, and as the Commissioners themselves admit, cannot always, be successful to the Extent they desire; still, I confess myself generally at a loss to suggest an Improvement. I think Mr. Bethune is hypercritical, and that it is much in favour of the Code that the Objections to it he has adduced in his Minute are not of a more grave and serious Character. In his Strictures on the Definition of Assault, for instance, natural Philosophers and Chemists tell us, doubtless, that Air, though subtle and invisible, is a *Substance* possessing all the principal Attributes of Matter; but Lawyers and Jurymen would scarcely, I think, be brought to declare that a Man by speaking or putting in Motion the Air, and bringing it in contact with the Tympanum of another's Ear, was bringing a Substance in contact with the Person of another "so as to affect that other's Sense of Feeling." Natural Philosophy makes Air a Substance. Mythology makes Air a Person. It would be difficult to prove it either in a Court of Law; and I have no more Apprehension of the Air set in motion by the Voice being deemed instrumental to an Assault, under the Code as it stands, than I have, should we add a Chapter on Incontinence, of Zephyr being prosecuted for those Transactions with Aurora which are said to have taken place--

" In Beds of Violets Blue,
And full-blown Roses dipt in Dew."

Still I confess that I think the Definition of Force and Assault perhaps the least happy in the Code, and I shall be glad to see what Mr. Bethune proposes to substitute for it.

I think we must retain as much of the Code as is retainable, and pass as much as is passable. It is the Code of the Law Commissioners which the Court of Directors have authorized us to pass, with such Modifications as may be necessary. I am afraid from the Terms of this Minute that what Mr. Bethune proposes to bring before us is another Code, founded partly on this, partly on the English Act of Crimes and Punishments, and in some Points differing from both, the Language of the Law Commission Code being rejected. This may be an Improvement on its Predecessors; but is it what we are directed to consider, and what we have Authority to pass?

This is a Matter for us to determine on Saturday.

(Signed) F. CURRIE.

No. 161.

MINUTE by the Honourable J. Lewis, dated 22d May 1850.

On Mr. Bethune's 3d Minute on the Code. THE Object of all Law is to circumscribe the Discretion of the Judge.

The Nature of the Subject and the Imperfection of Language makes the Attainment of absolute Accuracy of Definition in the Science of Codification (as in some other Metaphysics, for example,) impossible; but this affords no Reason why the Law Maker should not exert himself to the utmost to be as exact as he can; and it certainly appears to me that in this Code now under Review the Field defined by the Law has been enlarged, and the outside or, undefined Margin in which the Judge's Discretion must oscillate has been reduced in Breadth.

In certain Instances the Ambition to be quite precise may have overleaped itself, and fallen on the other Side; but it will be better, I think, to content ourselves with modifying these Passages, than to make any organic Change in the Structure of the Code. The Language also I would alter as little as possible. It is uncouth and outré, no doubt, but with certain Exceptions, again, it conveys the

the Intention of the Author clearly enough, and, unless to get rid of Ambiguity, I would let it stand.

With reference to technical Terms, &c., we must bear in mind that we are legislating for India, and not for England. The Designation of Offences, for example, which are familiar enough to us, even though not Lawyers, are not so to the People who are to live under this Law. Mr. Bethune, I observe, prefers "Burglary" to "Lurking-house Trespass," but the Word Burglary, by itself, would convey absolutely nothing to the Sensorium of a Native; whereas the other Phrase, ill-conditioned though it sound, would, and is, therefore, for our present Purpose, the better of the Two.

If the Principles upon which the Code is founded be sound, as I believe they are,—its Classification of Offences in the main good,—and its Requirements and Penalties just,—the more of it we adopt, and the less of it we abandon, the better, in my Opinion.

I have, &c.
(Signed) J. Lowis.

No. 165.

MINUTE by the Honourable J. E. D. BETHUNE, dated 24th May 1850.

Penal Code, 4. ON the Discussion of my former Minute with respect to an inferior Limit of Punishment, Sir F. Currie expressed a Wish to know if the Commissioners had not advanced any Arguments in favour of the Course followed by them, which appeared to be an Innovation on both the Practice of India and the recent Course of Legislation in England. I pointed out then the only Passage I had discovered in the Commissioners Report bearing on the Question in Note M, where they refer to an Article of the French Code punishing with Imprisonment and Hard Labour for not less than Five Years any Assault producing Sickness or Inability to work for more than Twenty Days. Their Remark is—"It is said, and we can easily believe it, that in such (trifling) Cases the French Juries have frequently refused, in spite of the clearest Evidence, to pronounce a Decision which would have subjected the Accused to a Punishment so obviously disproportioned to this Offence." This Remark, so far as it goes, confirms the Views taken in my former Minute.

It has been pointed out to me, however, that as the Commissioners profess to have derived valuable Assistance from Mr. Livingstone's Code, and have in fact obviously modelled their Code in more than One Place upon his, they may fairly enough be supposed to have been guided by him, and to have adopted his Argument on this Question. Mr. Livingstone's Remarks are contained in Pages 86-88, in his Introductory Report to the System of Penal Law. I am most anxious that every Point in this Discussion on which I see Reason to differ from the Conclusions of the Commissioners should be fully canvassed, and I think it will be desirable that an Extract of this Part of Mr. Livingstone's Report should be sent with our Proceedings to the Governor General. I cannot say that my Opinion is changed by anything which Mr. Livingstone urges. Indeed, I had weighed his Remarks before writing my former Minute. The further Examination of this Question on which I have thus been put furnishes me with an additional Argument from the Recommendations of the English Criminal Law Commissioners. I stated in my former Minute that since 1820 only Three Acts of Parliament have been passed containing a Minimum of Imprisonment, as far I could trace them, in the Digest of Offences and their Punishments in the Appendix to the Fourth Report of the Commissioners.

On this it was remarked with Justice that the Digest showed the Law only as it is in England, and not as the Commissioners thought it ought to be. Evidence on that Point is supplied by their proposed Act of Crimes and Punishments, which also I have lately analysed with reference to this Question. They give a graduated Scale of Punishments, divided into Forty-five Classes, beginning with Death as a Traitor, and ending with a Fine of 40*l*.

Class 1st is Death as a Traitor, by beheading, &c.

Class 2d, Death by hanging.

Class 3d, Transportation for Life.

Class 4th, Transportation for Life or for any other Term not less than Seven Years.

Class 5th, Transportation for Life or for any other Term not less than Seven Years, or Imprisonment for any Term not exceeding Three Years and not less than One.

Class 18th, Imprisonment for any Term not exceeding Three Years nor less than One Year.

Class 19th, Imprisonment for any Term not exceeding Three Years nor less than Six Months.

In every other Class in which Transportation is mentioned it is given alternatively with Imprisonment ; and in those Cases, as well as where Imprisonment only is mentioned, no Minimum of Imprisonment is prescribed.

I proceed to notice the Offences for which each of these Classes of Punishment is selected.

There are only Two Offences subject to the Punishment of Class 19. These are, the unlawful Possession of Paper manufactured for Postage Covers and for Exchequer Bills. It must have been by a chance Caprice that the Minimum was attached to these Offences, differing not at all in Principle from many others for which there is no such Limitation.

I have not been able to find a single Offence punishable in Class 18. My Examination has been hasty, and therefore I do not positively assert there is none.

Class 5 contains by far the greatest Number of Offences for which there is a limited minimum Punishment. They are almost all of aggravated Forgeries and Offences connected with Forgery. Common Forgery is punished under the 21st Class, and liable to Imprisonment not exceeding Three Years.

There are only Two Offences under Class 4: Assisting alien Enemies to escape out of the Realm, and stealing from a Dwelling House with aggravated Circumstances.

There are Three Offences under Class 3 :—

Returning from Transportation, Rape, and Carnal Knowledge of a Girl under Ten Years of Age.

There are Nine or Ten Offences under Class 2, which is Death :—

Destroying Ships of War, &c., Murder, Attempts to murder by Poison, &c., burning Ships with Danger to Life, unnatural Offences, Burglary with Attempt to murder, Arson with Danger to Life, Piracy with Attempt to murder, showing false Lights with Intent to wreck.

Class 1 contains Treasons only.

For most of the Offences under Classes 1, 2, 3 I think a minimum Punishment may be adopted without much Risk, as it is very difficult to conceive the Commission of these Crimes without atrocious Guilt, and perhaps the same may be said of a few other Crimes, such as Perversion of Evidence (Fabrication of false Evidence, in the Code) ; but in no Case in which the greatest Punishment is less than Transportation for Life should I be disposed to recommend any Attempt to fix a Minimum.

The Commissioners have fixed a minimum Imprisonment of Six Months for several Offences, of which the highest Punishment is Imprisonment for Three Years. I am bound, however, to admit, that on a close Examination of the Code with reference to this particular Question, I find a much greater Number of Offences for which there is no Minimum fixed than I believed to be the Case when I wrote my former Minute on it.

(Signed) J. E. D. BETHUNE.

No. 166.

MINUTE by the Hon. J. E. D. BETHUNE, dated 24th May 1850.

Penal Code. — THE Tendency of some of my Observations on the Language and Definitions of the Penal Code has been, I think, mistaken. The Force of my Objection to the Attempt at impracticable Precision in the Definitions of Assault and grievous Hurt, and many others, would be very little weakened if it were decided

decided that the Air is not a Substance within the Meaning of the Act. But I am satisfied that in the Spirit in which the Definitions were composed the Commissioners themselves would declare that it is included within the Definition, and would deprecate Lawyers and Jurymen taking that Course which Sir Frederick Currie, in the Exercise of Common Sense, suggests that they ought to follow. My Argument is, that they may be trusted not only to that Extent but a great deal further with Advantage. Mr. Lewis seems to think that when I propose the Term "*Burglary*" instead of certain Cases of "*Lurking House-trespass by Night*" I am about to introduce a Word known only to English Law. But see the Bengal Regulations.

1805. xvi. v. Persons accused of Murder, Robbery, *Burglary*, Arson, &c., shall be committed to close Custody.

1817. xvii. vii. Persons convicted of Murder in prosecution of Robbery, *Burglary*, or Theft are liable to a Sentence of Death.

1817. xx. xv. 4. The Darogahs shall report to the Magistrate every Instance of *Burglary* and Theft.

1818. xii. vii. Thefts, whether attended with *Burglary* or otherwise, and see ii. and marginal Notes to i. ii.

1824. x. iii. In cases of Murder, Gang Robbery, Highway Robbery, Murder by Thugs, Coining, and Forgery, as well as in Cases of *Burglary* and Theft, &c.

See also the numerous References to Circular Orders, Constructions, and Reports of the Nizamut Adawlut, given by Beaufort. Thus the Term appears familiar to the Mofussil Courts in Bengal at least; and of course in the Translation of these Regulations and Orders a corresponding technical Term is already fixed and perfectly well known.

The Changes which I wish to make in the Code are not so numerous in Principle as my Colleagues seem to apprehend; but I find it difficult to fix upon any intermediate Course between agreeing to pass it *verbatim* as it stands, and endeavouring, with all the Pains and Care in my Power, to amend it according to my Views of what needs Amendment in it exactly in the same Manner as I should proceed with any other Act under Consideration by the President in Council.

(Signed) J. E. D. BETHUNE.

No. 167.

F. J. HALLIDAY Esq. to Sir H. M. ELLIOT K.C.B.
(Home Department, Legislative, No. 385.)

Sir,

Fort William, 7th June 1850.

I AM directed to transmit to you, to be laid before the Most Noble the Governor General, the accompanying Minutes by the Members of Council on the Subject of the Penal Code.

The first of these is by Mr. Bethune, dated 29th April, and it relates entirely to the Question of striking out the Illustrations from the Code, or retaining them in it. Mr. Bethune proposed to strike them out, and this was agreed to by the Majority of the Council, with the Observation that they ought to be, with some Expurgations, published in the Form of an Appendix to the Code, as in that Form they will be very useful in illustrating and defining the Meaning of the Law.

The Fifth Minute, by Mr. Bethune, relates chiefly to the Degree in which the Discretion of the Courts should be limited in awarding Punishment. Mr. Bethune expressed his Opinion that the Principle adopted by the Framers of the Penal Code of generally defining not only the greatest but also the least Punishment which can be given for each Offence is very mischievous, unless limited to some of the most atrocious Classes of Crimes. It was eventually determined that this Question should be considered at a later Stage, when the Chapter of Punishments should come in due Order before the Council.

I have, &c.

(Signed) F. J. HALLIDAY.

Secretary to the Government of India.

No. 168.

Sir HENRY ELLIOT K.C.B. to F. J. HALLIDAY Esq.
(Home Department, No. 88.)

Sir,

Simla, 13th June 1850.

WITH reference to the Letter from the Honourable the President and Members of the Council of India to the Address of the Most Noble the Governor General, dated the 10th ultimo, No. 320, I am directed to transmit to you, for Submission to his Honour in Council, the accompanying Copy of a Minute recorded by his Lordship on the Subject of the Three Draft Acts alluded to therein.

I have, &c.

(Signed) H. M. ELLIOT,
Secretary to the Government of India,
with the Governor General.

Enclosure in No. 168.

MINUTE by the Most Noble the GOVERNOR GENERAL of INDIA, dated Simla,
8th June 1850.

Draft Act abolishing Exemption from the
Jurisdiction of the East India Company's
Criminal Courts, and Two others.

1. HAVING no Copy of my Minute of 19th April, I have been compelled to postpone One or Two Remarks which the Minutes of other Members of Council appeared to me to call for until such Copy could be transmitted to me from Calcutta. I have received it this Day.

2. Sir F. Currie dissents "from the Propriety of the Expression which occurs in several Parts of the Governor General's Minute, and pervades the Papers of those who oppose the passing of these Acts, viz., that by making British-born Subjects amenable to the Jurisdiction of the Company's Courts we are depriving them of a *Right of Exemption which they have hitherto always enjoyed.*"

The Honourable Baronet then proceeds to show that before the Charter Act of 1833 British Subjects had no Right to be in India at all; that they might be deported; and he remarks, "there was not practically much Right of Exemption from Company's Jurisdiction here." He further quotes Sections 81 to 86 of the Act of 1833, and concludes, "the Exemption which British Subjects have enjoyed since their Permission to reside has not been of *Right*, but by the Omission of the Government to fulfil the Requirements of the Law."

3. I regret Sir F. Currie should not have done me the Honour of referring to my Minute before he condemned the Propriety of Expressions which he attributes to it. I beg to say, that in no Passage of my Minute have I stated that British-born Subjects have a *Right* to Exemption from local Courts or local Law.

I have nowhere said, that they have hitherto *always* enjoyed that Right.

4. On the contrary, my Expressions are carefully limited. In Paragraph 4 I stated, "*as the Law stands at present*, British Subjects throughout the Provinces are exempted from the Jurisdiction of the Criminal Courts of the Honourable Company. It is proposed by the Draft Act to do away with this Exemption, and to enact, in point of fact, that British Subjects who have *at present the Privilege* of being amenable *only* to the Criminal Courts at the Presidency, and to the English Law, shall be brought within the Jurisdiction of the Criminal Courts in the Provinces." In Paragraph 5 I object to deprive a British Subject "of his *Privilege* of being judged by English Law, until we can place him under a Criminal Law equally good." In Paragraph 9 I speak of the "*present Privilege*" of British Subjects; and in Paragraph 8 I refer to the "*Law of his own Land under which he has hitherto lived.*"

5. I was dealing practically with Facts as they exist. I apprehend it will not be denied that in point of fact British Subjects do enjoy an Exemption from the local Criminal Court and local Criminal Law, and that they have hitherto enjoyed that Privilege. My Minute states this, and no more. It does not assert for British Subjects a *Right* of Exemption, or affirm that such Right has always existed. I therefore do not admit that Want of Propriety in the Expressions I have employed on which Sir F. Currie has animadverted.

6. The Honourable Mr. Lewis thinks that it would be a lesser Evil to subject British Subjects to the Criminal Courts and Criminal Law as they stand, than to leave Matters as they are until the Criminal Code can be enacted. The Honourable Mr. Bethune agrees with our Honourable Colleague.

7. I have already felt it my Duty to declare a different Opinion, and I have submitted my Reasons. The Court of Directors also entertain a different Opinion, as appears from their Despatch of 3d April.

8. In that Despatch they refuse their Assent to One of the Draft Acts, and virtually forbid the passing of the other Two until their further Views should be communicated to the Government of India. I consider that this was intended to be understood as a
Suspension

Suspension of all Proceedings on these Draft Acts until the promised Communication of their Views should be made. I have therefore to suggest that the Proceedings which I took the liberty of recommending on 19th April, and which the Honourable the President in Council has done me the Honour of adopting, should be altogether suspended, until the Pleasure of the Court shall be known.

(Signed) DALHOUSIE.

No. 169.

F. J. HALLIDAY Esq. to Sir HENRY ELLIOT K.C.B.

(Home Department, Legislative, No. 431.)

Sir,

Fort William, 28th June 1850.

I AM directed by the Honourable the President in Council to acknowledge the Receipt of your Letter, No. 88, of the 13th instant, enclosing a Minute by the Most Noble the Governor General, dated the 8th idem, upon the Subject of the Draft Act "for abolishing Exemption from the Jurisdiction of the East India Company's Criminal Courts."

2. With reference to the Suggestion contained in the latter Part of his Lordship's Minute, that the Proceedings which he had recommended on the 19th of April, and which the President in Council had adopted, should be altogether suspended until the Pleasure of the Honourable the Court of Directors be known, his Honour in Council desires me to state, for his Lordship's Information, that the Consideration of the Draft Act above referred to has been entirely suspended since the Date of his Lordship's First Minute on the Subject, dated 19th April, and that, in accordance with his Lordship's Desire therein expressed, the Legislative Council has been sedulously employed during the past Two Months in the careful and laborious Scrutiny and Revision of the Penal Code, in the remodelling of which very considerable Progress has been made.

3. The President in Council is desirous of representing to his Lordship that the Honourable Court's Orders of 3d April have not heretofore been construed either by the Council in Calcutta, or, as far as is known, by the Governor General, to require the Suspension of the Revision of the Penal Code, which Revision, though it arose out of the Draft Act above noticed, is not necessarily connected with it. The Honourable Court has indeed been informed by a Despatch, dated 10th May, that the Council are engaged in the Consideration of the Penal Code, and the Reply to that Despatch, and also the promised Expression by the Court of Directors of their Views on the suspended Draft Acts, may be expected before the Revision of the Code can be fully completed.

4. The Preparation, I am desired to add, of the revised Penal Code has been actually ordered by the Honourable Court in their Despatch of 20th September 1848, and the Completion of the Work will therefore not in any way commit the Government to any Course of Proceeding in regard to the suspended Draft Acts. If the Honourable Court should eventually approve the passing of those Acts, or any Modification of them, the revised Penal Code will be a very useful and fitting Measure of Improvement in the Criminal Law to accompany the new Acts; but if those Acts should be altogether disapproved by the Honourable Court, the Revision of the Penal Code, and the passing of a sound and comprehensive Criminal Law for India, will not be the less necessary, and it may be, and in the Judgment of the President in Council ought to be, carried into effect, whether the suspended Draft Acts ever become Law or not.

5. I am directed also to submit for his Lordship's Consideration, that the Work of revising the Penal Code has been so far carried towards Completion that the Principles on which it should rest have for the most part been determined. It is this which in such Cases constitutes the chief Difficulty, and it is upon this Part of the Work that the Legislative Council has hitherto been engaged. This done, the rest of the Code, which consists chiefly of Details, will be comparatively easy of Accomplishment, and the Council have already passed that Part of the Business which requires the greatest Labour and causes the greatest Delay.

6. The President in Council feels assured, therefore, that upon this Representation the Most Noble the Governor General will concur with the President in Council in thinking it expedient that his Honour should proceed with this

Work to Completion, subject, as it necessarily is, at every Stage, to his Lordship's Revision and Correction, and subject even to be finally rejected by his Lordship, if in his Judgment it should prove unsuitable to the Purpose for which it is intended.

7. A Minute has been recorded by Sir F. Currie, under Date 25th instant, of which I am directed herewith to transmit a Copy.

I have, &c.

(Signed) F. J. HALLIDAY,
Secretary to the Government of India.

Enclosure in No. 169.

MINUTE by the Honourable Sir F. CURRIE Bart., dated 25th June 1850

Governor-General's Minute. I HAVE read the Governor General's Minute dated 8th instant, dated 5th June, 1850 which has just come to me, with very great Regret.

I regret exceedingly that his Lordship should think that I had remarked on Expressions in his Minute of the 19th April regarding the Position of the British-born Subjects of the Queen in India without due Consideration of the exact Purport of those Expressions.

I quoted no particular Sentence of the Governor General's Minute. I gave what seemed to me the abstract Expression of the Phrases and Arguments of his Lordship in the Places where this Part of the Subject was discussed, after carefully studying the whole Minute.

I did not advert, I confess, to the Distinction which his Lordship in his present Minute appears to have intended between the Words "*Privilege*" and "*Right*." I think,—and I say it most deferentially and respectfully,—that in common Language a Privilege usually conveys the Meaning of a Right.* But in a Discussion where the legal Status of certain Parties was under Consideration (and the Privilege must be a legal Privilege), between such Privilege and Right the Distinction is not easily perceptible.

But I must be permitted to remark, further, in Defence of the Interpretation which I put on his Lordship's Language, that the Minute contains, in addition to the Term "*Privilege of being judged only by English Law*," the following Expressions:—

In Paragraph 8, "*We have no Right in the Legislative Council to deprive him (the British Subject) of the Protection of his own native Law, which has heretofore been carefully secured to him*"

And, again, the First Part of Paragraph 12 closed with these Words: "*and thus British Subjects might be deprived indefinitely of the Right which I contend ought not to be taken from them without the Substitute to which they are entitled*," in which the Existence of the *Right* of the British Subject to be judged in India by British Law did seem to me to be stated in express Terms.

I have stated the above in Self-justification, for I should grieve exceedingly if I could accuse myself of having given the Governor General just Cause to think that I had either intentionally misrepresented his Meaning or misunderstood it for Want of careful Consideration and Reflection.

I hope it is not the Governor General's Desire that we should suspend our Consideration of the Penal Code, upon which our Fourth Member has bestowed so much intense Labour, and with which, after great Toil, we have made considerable Progress. But this Part of his Lordship's Minute had better be considered in Council when we next meet.

(Signed) F. CURRIE

No. 170.

Sir HENRY ELLIOT K.C.B. to F. J. HALLIDAY Esq.

(Home Department, Legislative, No. 101.)

Sir,

Simla, 9th July 1850.

I HAVE the Honour to acknowledge the Receipt of your Letter, No. 385, dated 7th ultimo, transmitting Copies of Minutes recorded by the Members of Council on the Penal Code which has recently been under their Consideration.

2. The Most Noble the Governor General conceives that the Despatch recently addressed to the Governor General in Council by the Honourable Court of Directors respecting the Three Draft Acts which were the Cause of the Penal Code being taken into consideration was intended to stay all Proceedings connected with those Acts until the Honourable Court shall communicate their further Pleasure, as they have intimated their Intention of doing.

3. His

Note. Johnson in Folio Dictionary & the following definitions of "*Privilege*".—"*1. Peculiar Advantage. 2. Immunity.—Right not universal.*"

3. His Lordship therefore regards it as unnecessary to state at present his Opinions on the Subject Matter of the Minutes now before him.

4. The Despatch of the Honourable Court was written before they had received Intimation of the Course which the Government has ultimately resolved to pursue in reference to those Acts. It is possible that on learning those Resolutions the Honourable Court may not desire that all Proceedings should be stopped. It is not expedient, however, that this Point should be left in doubt.

5. The Governor General requests that a Letter may be addressed to the Honourable Court, acknowledging their Despatch relative to the Three Draft Acts.

6. Referring to the subsequent Proceedings of the Government of India, the Honourable Court should be requested to convey to the Government early and specific Instructions for its Guidance in the embarrassing Position in which the suspending Orders of the Honourable Court have placed it.

7. The promised Orders of the Court of Directors should be solicited; 1st, as to whether all Proceedings of the Draft Acts in question are to be abandoned; 2d, as to the Course which is to be followed if the Drafts are to be proceeded with, especially with reference to the Views stated in the Minutes of the Governor General and the Members of the Council regarding the Penal Code.

I have, &c.

(Signed) H. M. ELLIOT,
Secretary to the Government of India,
with the Governor General.

Enclosure in No. 170.

MINUTE by the Most Noble the GOVERNOR GENERAL of INDIA, dated 1st July 1850.

On Penal Code. I have received the Copies of Minutes recorded by the Members of Council on the Penal Code which has been under their Consideration.

I conceive that the Despatch recently addressed to the Governor General in Council by the Honourable Court of Directors respecting the Three Draft Acts which were the Cause of the Penal Code being taken into consideration was intended to stay all Proceedings connected with those Acts until the Court shall communicate their further Pleasure, as they have intimated their Intention of doing.

I therefore regard it as unnecessary to state at present my Opinions on the Subject Matter of the Minutes now before me.

2. The Despatch of the Court was written before they had received Intimation of the Course which the Government has ultimately resolved to pursue in reference to those Acts. It is possible that on learning those Resolutions the Court may not desire that all Proceedings should be stopped. It is not expedient, however, that this Point should be left in doubt.

3. I would request that a Letter may be addressed to the Honourable Court, acknowledging their Despatch relative to the Three Draft Acts.

Referring to the subsequent Proceedings of the Government of India, the Court should be requested to convey to the Government early and specific Instructions for its Guidance in the embarrassing Position in which the suspending Orders of the Court have placed it.

Solicit the promised Orders of the Court, 1st, as to whether all Proceedings of the Draft Acts in question are to be abandoned; 2d, as to the Course which is to be followed if the Drafts are to be proceeded with, especially with reference to the Views stated in the Minutes of the Governor General and the Members of the Council regarding the Penal Code.

(Signed) DALHOUSIE.

No. 171.

F. J. HALLIDAY Esq. to Sir H. M. ELLIOT K.C.B.
(Home Department, Legislative, No. 472.)

Sir,

Fort William, 26th July 1850.

I AM directed to acknowledge the Receipt of your Letter, No 101, dated the 9th instant, with Copy of a Minute recorded by the Most Noble the Governor General under Date the 1st idem, suggesting a Reference to the Honourable

Court of Directors for the Purpose of ascertaining the Course that should be adopted in regard to the Three Draft Acts noted in the Margin, and to state that before proceeding to address the Honourable Court again on the Subject the President in Council will await his Lordship's Reply to my Letter, No. 431, of the 28th ultimo.

1. For declaring the Law as to the Privilege of Her Majesty's European Subjects.
2. For abolishing Exemption from the Jurisdiction of the East India Company's Criminal Courts.
3. For Trial by Jury.

I have, &c.

(Signed) F. J. HALLIDAY,
Secretary to the Government of India.

No. 172.

SIR HENRY ELLIOT K.C.B. to F. J. HALLIDAY Esq.
(Home Department, No. 126.)

Sir,

Simla, 29th July 1850.

I AM directed to transmit to you the enclosed Copy of a Minute recorded by the Most Noble the Governor General, containing his Lordship's Sentiments on the Subject of Sir Frederick Currie's Minute on the Penal Code, enclosed in your Letter, No. 431, dated 28th June last.

I have, &c.

(Signed) H. M. ELLIOT,
Secretary to the Government of India,
with the Governor General.

Enclosure in No. 172.

MINUTE by the Most Noble the GOVERNOR GENERAL of INDIA, 20th July 1850.

On Penal Code 1. I HAVE received To-day the Copy of a Minute by Sir Frederick Currie of 25th June, observing on a Minute of mine of 8th June, in which I adverted to former Expressions in a Minute by Sir Frederick Currie dated 4th May, on the Subject of the Penal Code.

2. I certainly understood that the Minute of 4th May attributed to me the Declaration of an Opinion that British Subjects in India had always been recognized as exempted from the Authority of local Courts, and that they not only were practically exempt, but that they had a *Right* to be kept exempt from such Jurisdiction. I did not hold that Opinion, and after reading the present Remarks I still think that my Words did not bear the Construction put upon them.

3. However, I, on my Part, may misapprehend the Expressions employed; and if so I regret that I should have dwelt at all upon the Subject. I am certain that Sir F. Currie will do me the Justice to believe that I never for One Moment supposed that he knowingly misconstrued my Meaning; or that he intended anything else than a fair and frank Expression of his own Opinions on my declared Views in the Discharge of his Duty, and in the pursuance of that Course of friendly Co-operation which I have had the good Fortune to receive from him, and from the other Members of the Council, during my Residence in India.

4. In the Letter from the Secretary to the Government, dated 28th June, the President in Council conveys to me his Opinion that it is expedient that the Consideration of the Penal Code should be proceeded with in Council to its Completion.

5. The Despatch of the 3d April relative to the Draft Acts with which the Penal Code has been connected reached me at Simla in the Middle of May. I clearly understood that Despatch to be intended to stay peremptorily all Proceedings regarding the Draft Acts. I was so satisfied of this Fact that I presumed the President in Council would, on receiving the duplicate Despatch, put the same Interpretation upon it. On learning that the President in Council had not so construed the Orders of the Court, I conveyed to his Honour my Views thereupon in the First Week of June. Subsequently, on receiving the preliminary Minutes of the Members of Council, I again expressed my Views; adding, that as I was perhaps mistaken, it would be advisable to request the immediate Orders of the Court upon the Matter.

6. The President in Council is unwilling to stay the Proceedings of the Council, and desires to pursue the Consideration of the Penal Code. His Honour justly observes, that the Code may be passed without the Draft Acts which the Court has stopped. The Code undoubtedly may be so passed, but I conceive that there would be comparatively very little Advantage in doing so, without the passing of the Acts in question simultaneously with it. But, however that may be, the Conviction produced in my Mind by the Despatch of the Court, and by what I have gathered of the Views of the Authorities in England, is, that they intend to stop all Proceedings of every Description on the Subject until their Views shall be conveyed to us. It therefore appears to me that

that the Council, in the Prosecution of their Consideration of the Code, are assuming a great Labour, which will be entirely thrown away if the Court should hereafter take the Course I have anticipated. And as I saw, and can now see, no Inconvenience to the Government, and no Detriment to the public Interests, in suspending the Consideration of the Code until the further Orders of the Court shall be received, I have suggested that Labour, possibly needless, should be avoided, by suspending Consideration accordingly.

7. If his Honour should nevertheless be of opinion that it is better for the Council to proceed, I can of course offer no Objection. But I trust his Honour will not consider me to fail in the Co-operation which the Council have a Right to expect from me, if I postpone such Part of the Task as may devolve on me until I learn from the Court that it is not their Intention to stay Proceedings on the Penal Code as well as on the Draft Acts.

I am most willing to undertake any Labour that is necessary or beneficial to the State; but I am naturally unwilling to add to the constant and harassing Business which burdens me by going laboriously through a Criminal Code at a Time when my own Conviction is that it will be stopped.

I sincerely hope it will be allowed to proceed; but till that Hope is accomplished, and till my present Conviction shall be shown by the Receipt of Orders from the Court to be erroneous, I wish to avoid an apparently superfluous Labour, more especially as not the slightest public Disadvantage can, in my humble Judgment, arise from such Delay.

8. There is an Expression, however, employed in the Letter now before me, on which I think it my Duty at once to remark.

In Paragraph 5 it is stated that the "Work of revising the Penal Code has been so far carried towards Completion that the Principles on which it should rest have for the most part been determined." It is this which in such Cases constitutes the chief Difficulty, and it is upon this Part of the Work that the Legislative Council has hitherto been engaged.

I have read these Words with Anxiety, because they appear to me to indicate that the Legislative Council has re-opened the whole Question of the Penal Code, constructed by the Law Commission, and approved by the Authorities in England; and that they have been engaged in the Consideration of the Principles of a Code of Criminal Law. The Council has in point of fact in such Case been either constructing or reconstructing a Criminal Code.

I hope very much I may be in error in so understanding the Passage I have quoted. If I have not misinterpreted it, I greatly doubt whether I shall be able to give to the Proceedings of the Legislative Council the full and prompt Concurrence which it is my earnest Desire at all Times to offer.

I have, both in the Discussions in Council and in my Minute, held the same Language, I have maintained the Competency of the Council to alter or slightly modify the proposed Code, so far as I conceive it has ever been contemplated that they should do so; but I have at the same Time professed my Conviction (and I trust the Council will not take it amiss if I repeat my Conviction) that the Governor General in Council is not capable of performing the Task of constructing a Criminal Code. But if the Principles of the Code furnished by the Law Commission have been now debated in Council, and still more if the Code has in respect of its Principles been altered in consequence of those Debates, I shall not feel myself justified, without a Reference to the Court, in giving my Assent to a Code of Criminal Law prepared by the Legislative Council which is not the Code of Criminal Law that the Court of Directors authorized the Legislative Council to pass.

9. I hope the Event may prove that I have attributed to the Words in Paragraph 6 a stronger Meaning than they were intended to bear. But as the Council wish to proceed with the Code, I think it right to avoid the Chance of misleading them by passing over these Expressions in silence, and frankly to state my own Feelings on this Occasion.

(Signed) DALHOUSIE

No. 173.

Sir H. M. ELLIOT K.C.B. to F. J. HALLIDAY Esq.

(Home Department, No. 131.)

Sir,

Camp Juggutpore, 19th April 1851.

With reference to the 8th Paragraph of the Despatch from the Honourable the Court of Directors in the Judicial Department, dated the 5th ultimo, No. 4, I am directed to transmit, for the Consideration of the Honourable the President in Council, the enclosed Copy of a Minute recorded by the Most Noble the Governor General of India, under Date the 17th instant, regarding the Introduction of the Penal Code; and to convey the Request of his Lordship that his Honour in Council will be pleased to favour him with his Sentiments as early as practicable.

I have, &c.

(Signed) H. M. ELLIOT,
Secretary to the Government of India,
with the Governor General.

Enclosure in No. 173.

MINUTE by the Most Noble the GOVERNOR GENERAL of INDIA, dated 17th April 1851.

Penal Code. 1. IN the Month of May 1850 the Honourable Court of Directors intimated their Opinion that the Draft Act for "abolishing Exemption from the Jurisdiction of the " East India Company's Criminal Courts " should not be passed until the Court had expressed their deliberate Conclusions regarding it.

In a Despatch dated 27th November 1850 the Honourable Court adopt the View that, before rendering British-born Subjects amenable to the Company's Courts, the Law which those Courts are to administer should be defined.

They approve of the Resolution of entering on a Consideration of the Penal Code, and they conclude by saying, " When you have completed your Labours we desire that you " will communicate the Result to us, with such Observations and Suggestions as you " may deem requisite, before you proceed to carry your Views practically into operation."

In another and more recent Despatch the Court again allude to the Penal Code, in reference to its proposed Introduction into the Provinces of the Punjab.

2. I am under the Impression that considerable Progress has been made in the laborious Task of considering the Penal Code by the President and the Members of Council ; and it is probable that the Wish expressed by the Court to be furnished with the Result of our Deliberations may without Difficulty be fulfilled at an early Period.

Although it is my Intention to return to the Presidency after the ensuing Rains, I feel it to be desirable that we should attend to the expressed Desire of the Court at once, and should communicate to them the Views of the Government of India, without any Delay that can be avoided.

3. I hold myself prepared accordingly to enter on the Consideration of the Code, or of any Portion of it which the Council may have disposed of, and may wish to transmit to me, for the Record of my Opinion, so far as I may find myself competent to offer one to the Court.

(Signed) DALHOUSIE

No. 174.

F. J. HALLIDAY Esq. to Sir H. M. ELLIOT K.C.B.

(Home Department, Legislative, No. 289.)

Sir,

Fort William, 9th May 1851.

I AM directed to acknowledge the Receipt of your Letter, No. 131, dated the 19th ultimo, forwarding Copy of a Minute recorded by the Most Noble the Governor General, in which his Lordship invites the early Consideration by the President in Council of the Penal Code, and requests that any Portion of it which may have been disposed of may be transmitted to him, for his Opinion.

2. His Honour in Council desires me, in reply, to state that the Code is now going through the Press, and that a Copy of it will be forwarded for the Consideration of the Most Noble the Governor General as soon as it is ready.

I have, &c.

(Signed) F. J. HALLIDAY,
Secretary to the Government of India,
Home Department.

No. 175.

F. J. HALLIDAY Esq. to Sir H. M. ELLIOT K.C.B.

(Home Department, Legislative, No. 325.)

Sir,

Fort William, 30th May 1851.

In continuation of my Letter No. 289, dated the 9th instant, I am directed by the President in Council to forward, to be laid before the Most Noble the Governor General, the accompanying Three Copies of a revised Edition of the Penal Code.

I have, &c.

(Signed) F. J. HALLIDAY,
Secretary to the Government of India,
Home Department.

No. 176.

The GOVERNMENT of INDIA to the JUDGES of the SUPREME COURT, CALCUTTA.
(Home Department, Legislative.)

Honourable Sirs,

Council Chamber, 30th May 1851.

WE have the Honour to forward the accompanying Copy of a revised Edition of the Penal Code, and shall feel obliged by your favouring us with any Observations or Suggestions on its Provisions which may appear to you to be necessary.

We have, &c.

(Signed) J. H. LITTLER.
F. CURRIE.
J. LOWIS.
J. E. D. BETHUNE.

No. 177.

F. J. HALLIDAY Esq. to the JUDGES of the SUDDER COURT, CALCUTTA.
(Home Department, Legislative, Nos. 461 to 465.)

Sir,

Council Chamber, 30th May 1851.

I AM directed by the President in Council to forward to you the accompanying Copy of a revised Edition of the Penal Code, and to request that you will favour the Government with such Observations or Suggestions on its Provisions as may appear to you to be necessary.

I have, &c.

(Signed) F. J. HALLIDAY,
Secretary to the Government of India,
Home Department.

No. 178.

F. J. HALLIDAY Esq. to Sir H. M. ELLIOT K.C.B.
(Home Department, No. 235.)

Sir,

Simla, 10th July 1851.

WITH reference to the Copies of the revised Edition of the Penal Code, received with your Letter No. 325, dated 30th May last, I am directed to transmit to you, for Submission to the Honourable the President in Council, the accompanying Copy of a Minute recorded by the Governor General, containing his Lordship's Sentiments on the Subject thereof.

I have, &c.

(Signed) H. M. ELLIOT,
Secretary to the Government of India,
with the Governor General.

Enclosure in No. 178.

MINUTE by the Most Noble the GOVERNOR GENERAL, dated 7th July 1851.

Penal Code. 1. I HAVE now completed the Examination of the Penal Code in the Form in which it has been transmitted by the Honourable the President in Council.

The Examination and Comparison of it with the Text of the Penal Code prepared by the Law Commission have occupied some Time, by reason of the Interruptions consequent upon the Necessity of disposing of other public Business without Delay.

2. The present Document bears Evidence of great Labour and of careful Consideration. Its general Arrangement appears to me to be distinct and clear; its Expression at once comprehensive and concise; its Language both lucid and simple.

But the Examination which has led me to remark and to appreciate these excellent Qualities in the Code as it stands has led me also to the Conclusion that it has now become a Penal Code substantially different from that which was constructed by the Law Commission, and sanctioned as fit for Enactment by the Honourable Court of Directors.

3. The general Arrangement differs materially from that of the Commission Code. The Definitions have been almost entirely re-worded. In some Instances the Principle enacted has been changed, and technical Terms have been altered. In short, the Penal Code of the Law Commission has in great Part of its Substance been reconstructed.

4. The Code thus altered was constructed, as I have before had Occasion to remark, by a Commission specially appointed for the Purpose, and separate from the Legislative Council. The Work of their Hands was submitted for the Consideration and subjected to the Criticism of many Gentlemen learned in the Law. Thereafter the Code was revised and re-revised; and finally, after Fifteen Years Labour, it was judged fit to be enacted into Law; and the Court of Directors communicated their Sentiments to that Effect to the Governor General in Council.

5. Under these Circumstances I should have been much embarrassed as to the Course of Action I should follow with respect to the present Work, seeing that it varies in many material Respects from the Code of Criminal Law prepared by the Law Commission with such elaborate Care, and sanctioned by so great a Weight of legal Authority.

The recent Orders of the Honourable Court, however, relieve me from all Embarrassment, by directing that the Result of the Examination of the Code on which they were informed last Year that a Legislative Council was engaged should be submitted for their Consideration.

6. I have therefore the Honour to request that the President in Council will cause the Code to be transmitted to the Honourable Court, with a Copy of this Minute, and with any Remarks which his Honour in Council may wish to record.

7. In submitting the Work of the Legislative Council to the Honourable Court of Directors, I take the liberty of expressing respectfully and earnestly my Hope that the Honourable Court will not permit the Subject of the Penal Code to be now laid on the Shelf, but that they will send some definite Instructions for the Guidance of the Governor General in Council in legislating fully and at an early Period for the Establishment of some One Code of Criminal Law in the Territories of the East India Company.

8. I will not trouble the Court by repeating the Observations on the present State of that Law, if Law it can be called, which I recorded in a Minute dated 19th April 1850. I venture to entertain a sanguine Hope that the Honourable Court will recognize the Necessity of terminating the present State of Things, and of establishing in India a Body of Criminal Law which shall be intelligible to the People who shall be subject to it, and worthy of the great Power under whose Rule they live.

(Signed) DALHOUSIE.

No. 179.

The GOVERNMENT of INDIA to the JUDGES of the SUPREME COURT, CALCUTTA.
(Home Department, Legislative, No. 623.)

Honourable Sirs, Council Chamber, 25th July 1851.

WITH reference to our Letter of the 30th May last, we have the Honour to request that you will favour us at your earliest Convenience with your Sentiments on the Provisions of the revised Edition of the Penal Code, as we are desirous of forwarding the Draft Act, with the Opinions which may be received thereon, to the Honourable the Court of Directors, without Delay.

We have, &c.

(Signed) J. H. LITTLER.
F. CURRIE.
J. LOWIS.
J. E. D. BETHUNE.

No. 180.

F. J. HALLIDAY Esq. to the JUDGES of the SUDDER COURT, CALCUTTA.
(Home Department, Legislative, No. 613.)

Gentlemen, Council Chamber, 25th July 1851.

WITH reference to my Letter of the 30th May last, I am directed to request that you will favour the Government as early as possible with your Sentiments on the Provisions of the revised Edition of the Penal Code, as it is desired to forward the Draft Act, with the Opinions which may be received thereon, to the Honourable the Court of Directors, without Delay.

I have, &c.

(Signed) F. J. HALLIDAY,
Secretary to the Government of India,
Home Department.

No. 181.

The JUDGES of the SUDDER COURT, CALCUTTA, to Sir J. H. LITTLER G.C.B.

Honourable Sir, Sudder Dewanny Adawlut, 31st July 1851.

WE have the Honour to acknowledge the Receipt of Mr. Secretary Halliday's Letter, No. 613, under Date the 25th instant, and to state in reply that we have no Prospect of having Time for giving an Opinion at all satisfactory to ourselves on the Provisions of the revised Edition of the Penal Code till the Vacation, which will commence on the 21st September next, shall afford us some Relief from the incessant Pressure of current Duties.

We have, &c.

(Signed) ABER. DICK.
R. BARLOW.
J. R. COLVIN.
J. DUNBAR.
A. MOFFATT MILLS.

No. 182.

The JUDGES of the SUPREME COURT, CALCUTTA, to the GOVERNMENT of INDIA.

Honourable Sirs, Court House, 6th August 1851.

WE regret that we are not able yet to send you the Observations of any One of our Body on the Draft Act on which you have done us the Honour to ask our Opinion. It reached us just on the Eve of the Commencement of Term, and it was due both to the learned Framers of the Act and to the Importance of the Subject to give it a very attentive Consideration, and to compare it with the Code and with other Works. The Chief Justice had made some Progress with his Observations on it, when he was obliged to lay them aside for a Time, first, in consequence of the Pressure of the Business of the Court on him, and latterly in consequence of Illness; but the Vacation is now approaching, and he hopes to be able in a short Time to submit to your Consideration his Observations on those Enactments of the Act which seem to him objectionable in Principle or faulty in the Expression of them.

We are not able yet to say whether these will serve as an Exposition of the Opinions of the Judges, or whether it will be necessary for each Judge to send a separate Minute on the Act; but if the latter Course should be necessary, you may be assured that no Time will be lost in forwarding each Document to you.

We have, &c.

(Signed) LAURENCE PEEL.
ARTHUR BULLER.
JAMES W. COLVILLE.

No. 183.

AN ACT OF OFFENCES and PUNISHMENTS.

CHAPTER I.

This Chapter will contain a Repeal of existing Criminal Law, and a Specification of the Time when this Act comes into operation, &c.

CHAPTER II.

*Definitions and Explanations.*No. of the
Penal Code

1. In every Part of this Act the following Words and Expressions are used with the Meaning given to each, and with none other, unless where it is otherwise specially provided.

2. An "*Article*" means such Part of this Act as is distinguished from the rest by a Number prefixed to it.

The Code uses the Word "*Clause*," corresponding with the Phraseology of Acts of Parliament. According to the Language of Indian Legislation hitherto, the main Articles are called "*Sections*,"

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and the Subdivisions of Sections "Clauses." This is a Matter of very little Consequence ; but it appears best that in this Act a Clause should not be something different from what it is throughout the Regulations.

It is proposed, in printing the Act, to distinguish by Italics or small Capitals, as Livingstone does in his Code, those Expressions which are defined. This will operate as a constant Warning to bear in Mind the Definition.

38 3. "*Herein*" relates to something in the same "*Article*" as that in which that Word is found : "*herein-before*" to some foregoing *Article*, and "*herein-after*" to some *Article* following that in which these Words are severally found.

6 4. "*A Man*" means a Male Human Being of any Age.

6 5. "*A Woman*" means a Female Human Being of any Age.

34 6. "*An Animal*" means any living Creature, other than a Human Being.

5 7. Every Word expressing the Male Kind, except the Words "*Man*" and "*Boy*," means a Female as well as a Male, unless there is something in the Subject Matter or Context inconsistent with such Meaning.

The Code confines this Explanation to the "Pronoun *he*," which might give rise to grammatical Arguments, whether or not such Words as "*his*," "*himself*," &c. are within it. The Words added, to avoid possible Inconsistency, have always been used for the Purpose, and it appears safer not to omit them.

25 8. With reference to any Act or Omission, or the Person or Thing in respect whereof it is done or left undone, where any Word is employed importing One Person only, it shall be taken to mean several Persons as well as One, and also Corporate Bodies ; and where any Word is employed importing One Thing only, it shall be taken to mean several Things as well as One ; unless in either Case there is anything in the Subject Matter or Context inconsistent with such Meaning

See Note to Art. 7.

8 9. "*Queen*" and "*Her Majesty*" mean the Sovereign for the Time being of the United Kingdom of Great Britain and Ireland.

10. "*India*" means the Territories in the possession of the East India Company.

9 11. "*Governor*" means the Person or Persons for the Time being lawfully
10 having the supreme executive Authority in the Country, Presidency, or Place which is the Subject of the Article in which the Word *Governor* is used ; or, if more than One Place is referred to, such Person or Persons in each respectively.

12. *Property* means anything which One or more Persons have a Right to use or keep exclusively of another or others. Wild Animals in their natural unrestrained State are not *Property*.

The Word *Property* is ambiguous, being sometimes used to express Ownership, sometimes for the Thing owned.

28 13. The Word "*unlawful*" is applied to every Breach of the Law and to everything for which a Punishment is provided by this or any following Act : a Person is said to be "*lawfully bound*" to do whatever it is *unlawful* for him to leave undone.

14 14. An "*Officer*" means any Person having Authority to perform, and *lawfully bound* to perform any public Duty.

12 15. A "*Judicial Officer*" means any Judge, Magistrate, Coroner, or other *Officer* having Authority to give or join in giving any Judgment of Law.

16. A "*Ministerial Officer*" means any *Officer* other than a *Judicial Officer*.

17. An "*Officer of Justice*" means any *Officer* employed in any Proceeding for or toward the Hindrance or Discovery of an *Offence*, or the taking, Trial, or Punishment of an *Offender*.

A Doubt arose under the Definition of *Judicial Officer* first proposed whether or not a Magistrate, or Person acting with any of the Powers of a Magistrate, while engaged in Inquiry preparatory to the Committal of an Offender for Trial, was or was not a *Judicial Officer*. It was thereupon suggested that it might be useful to add a Definition of Officers of Justice, some of whom would be judicial, some ministerial. This Article is not quite in its right Place, as it uses the Words *Offence* and *Offender*, not defined until Arts. 31, 32, but its Connexion with Arts. 14, 15, 16 seems to require its Insertion here.

18. A "*Court of Justice*" means any Place in which any Duty of a *Judicial Officer* is lawfully performed, either usually or temporarily, while such Duty is in course of Performance there. Any Order given, or other Proceeding taken, by or with reference to the Person performing such Duty in a *Court of Justice*, is said to be given or taken by or with reference to the *Court*. No. of the Penal Code
13
19. A "*Document*" means any written or printed, or partly written or partly printed Proof of any Fact. 21
- This differs altogether from the Definition of the Code. It is thought that the Definition here given explains more exactly the Thing which it is meant to define. A printed Gazette, containing an Advertisement necessary for legalizing certain Proceedings, should be included in it, &c.
20. A "*Valuable Document*" means any *Document* whereby any lawful Right is or is purported to be given, taken away, or changed, secured, acknowledged, or disclaimed. 22
- The Code uses the Words *valuable Security*. Obviously the Word *Document* should be retained, now that it is altered as in Article 19.
21. A "*Token*" means every *Document*, and also every Seal, Stamp, or Mark used to distinguish or authenticate any *Document* or *Property*. 231
- This includes the "Property Mark" of the Code 455.
22. "*Sterling Coin*" means coined Money, issued by Authority of the *Queen* or the *Governor of India*. 230
23. "*Current Coin*" means all *Sterling Coin*, and also coined Money issued by Authority of any Foreign Sovereign or State, and used as Money in any Part of *India*. 18
24. An Order, Summons, Notice, Warrant, or other *Document* issued by any *Officer* in discharge of his Office is said to be "*binding*," when such *Officer* has Authority by Law to issue it. 36
- In many Clauses of the Code it is an Offence to disobey Orders when issued by a Person having lawful Authority to issue them. This Definition gives Facility for condensing those Clauses.
25. A "*Year*" and "*Month*" are to be reckoned according to the British Calendar. 35
26. *Night* means the Time from Sunset to Sunrise. 29
27. A "*Carriage*" means any Machine or Contrivance on which anything can be carried on Land from one Place to another. 15
- The Word "*Carriage*," though strictly having the Meaning given in this Article, is popularly used for those Vehicles only which are used by the Gentry, and for Guns. A Coachmaker distinguishes the "*Carriage*" from the "*Body*." In 57 Geo. III. c. xxix. sec. 65. may be found Coach, Cart, Wain, Waggon, Dray, Wheelbarrow, Handbarrow, Sledge, Truck, or other Carriage. The Code uses "*Vehicle*" without Definition. It seems to require Definition as much as Vessel.
28. A "*Vessel*" means any floating Machine or Contrivance on which anything can be carried on Water from one Place to another. 27
29. "*A Wrong*" means any Harm whatever caused to any Person in Mind, Body, *Property*, or Reputation, in breach of any Law or good Custom. 15
- The Code uses the Word "*Injury*." "*Wrong*" is the Word best known to the English Law. It is used preferably by Blackstone and Hale. The Code speaks of "*wrongful Gain*" and "*wrongful Loss*." The Word should be changed, either here to "*wrong*," or there to "*injurious Gain*," and "*injurious Loss*."
30. "*Wrongful Gain*" means the Gain of any *Property* to which the Gainer is not lawfully entitled. "*Wrongful Loss*" means the Loss, through the *unlawful* Act of another Person, of any *Property* to which the Loser is lawfully entitled. "*Wrongful Gain*" may be by keeping as well as by getting any *Property* *unlawfully*. "*Wrongful Loss*" may be by being prevented from getting, as well as by being deprived of any such *Property*. 27
- This differs from the Code only by introducing into the Definition of "*wrongful Loss*" the Words "*by the unlawful Act of another Person*;" otherwise, accidental Loss is "*wrongful Loss*."
31. "*An Offence*" means whatever is punishable under this or any following Act. 27

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32. "*An Offender*" means a Person who has committed an *Offence*, either by doing that which he is forbidden by Law to do, or by not doing that which he is *lawfully bound* to do.

This Definition might not have appeared necessary, but for the Importance of strongly impressing the Principle laid down in Clauses 4 and 24 of the Code, and here in Article 38, that although the Language of the Code is generally applicable in its first Signification to Offences of Commission, it extends to Offences of Omission also.

33. "*A Culprit*" means a Person lawfully charged with being an *Offender*.

34. "*A Convict*" means a Person lawfully adjudged to be an *Offender*.

These Definitions will be of more Use in the Act of Criminal Procedure than in this Act, but they will be convenient even here. The Definition of "*Culprit*" corresponds with that given in Tomlin's Law Dictionary, and with the Account of the Origin of the Term in the Notes on Blackstone, Vol. IV. Page 408, Steph. Ed., 1845.

35. Persons concerned in the Commission of any Act are either *Principals* or *Abettors*.

36. Every Person is a *Principal*, who either commits the Act himself, or causes it to be committed, or who is One of several who jointly so commit it or cause it to be committed.

37. Every Person who, not being a *Principal*, counsels, contrives, or furthers in any way or does anything whereby a *Principal* is helped or encouraged to commit the Act, is said to *abet* the Act, and is called an *Abettor* thereof.

This Definition is purposely confined to what the Code calls "*previous Abetment*." It appears inaccurate to say that any One abets the Commission of an Offence by merely assisting the Offender *after* it is committed. That can have no Effect, so far as the so-called *subsequent Abettor* is concerned, on the Commission of the Offence. If any one promises beforehand to give Assistance afterwards, that is *Abetment* within this Definition. This View of the Matter is taken in the Report of the English Commissioners on Criminal Law.

38. Every Part of this Act concerning *Offenders* and the Commission of *Offences* shall be deemed to apply to *Offenders* who leave undone what they are *lawfully bound* to do, and to the *Offences* so committed, as well as to *Offenders* who do what they are forbidden by Law to do, and to the *Offences* so committed; as also to *Offences* consisting partly of Acts and partly of Omissions, and to the *Offenders* who commit such *Offences*.

39. *Offences* are of Two Kinds :

First.—*Felonies*, of which some are *Treasons*.

Secondly.—*Misdemeanors*.

A Classification of Offences will be found most convenient, both here and in the Code of Procedure. Felony is a feudal Term, and meant originally any Offence which occasioned the Forfeiture of the Vassal's Fee. The English Commissioners on Criminal Law have proposed a new Definition, which is adopted here, which makes it merely a Term to classify Offences by their Punishment. If it is not thought desirable to introduce a Word which is new to Indian Lawyers beyond the Supreme Courts, the Word "*Crimes*" might be substituted for "*Felonies*;" though it is desirable to keep as closely as possible to the Language of English Law. Blackstone uses "*Offences*" as the general Word, and "*Crimes*" to include Felonies and indictable Misdemeanors. The French Penal Code classifies Offences as "*Contraventions*," "*Delits*," et "*Crimes*."

There appears no Objection to the Use of the Word "*Felony*," taking care to define it. It is no valid Objection that capital and transportable Offences may not be in every Case the same in England and India.

40. "*Treasons*" are high *Offences* against the Queen's Sovereignty, such as are *herein-after* described: a *Traitor* means an *Offender* who commits *Treason*.

Offences against the Queen's Person and Family are also Treasons. In a Criminal Law for India it seems unnecessary to include them, as has been already observed by the Law Commissioners. In the unlikely Contingency of any of the Royal Family coming to India, a special Law for the Occasion might be passed.

41. *Felonies* are *Offences* which are punishable with Death or Transportation. A "*Felon*" means an *Offender* who commits a *Felony*.

42. *Misdemeanors* are *Offences* which are not *Felonies*. A "*Misdoer*" means an *Offender* who commits a *Misdemeanor* only.

It will be useful in the Code of Procedure to have the Word "*Misdoer*," which is more compact than "*Misdemeanant*," a Word scarcely used. Misdoer occurs often in the older Statutes. If the Word Misdemeanor were not already in use, "*Misdeed*" would be preferable to it.

43. A *Capital Offence* is an *Offence* punishable with Death.

44. *Hurt* means all bodily Pain, Disease, and Infirmary.

45. A Person or Animal is said to be *maimed*, when *hurt* in any of the following Ways :

First.—By losing or being permanently deprived of the Use of any Limb, Member or Joint, Eye, Ear, or other Organ of Sense.

Secondly.—By having the Powers of any Limb, Member or Joint, Eye, Ear, or other Organ of Sense permanently weakened.

Thirdly.—By permanent Disfigurement of the Head or Face.

Fourthly.—By having any Bone broken or dislocated.

Fifthly.—By permanent Sprain or Rupture of any Part of the Body.

This is nearly what the Code calls “grievous Hurt,” with the Omission of the last Kind, which is Hurt likely to cause Pain, &c., for Twenty Days. It is proposed to keep the Term of “grievous Hurt” to express “Hurts” of this last Kind, but without attempting to define them so strictly as is done in the Code.

46. “*Grievous Hurt*” is *Hurt* whereby the Sufferer is during Twenty Days in bodily Pain, diseased, or unable to follow *his* Trade or Calling, or any *Maim* or such other *Hurt* as causes not less Suffering than a *Maim* or such *Hurt* as is *herein* described.

The last Part of this Definition is of course vague : but it is thought less objectionable to leave it so, as a Question to be decided by the Court in each Case, than to adopt any artificial Limit of that which is in its Nature incapable of strict Definition. *Nimia subtilitas in jure reprobatur, et talis certitudo certitudinem confundit*, 4 Rep. 5. One Man may be laid up with a slight Sprain for Twenty-one Days ; this is “grievous Hurt.” Another is severely beaten and in danger of his Life for Nineteen Days, but able to go abroad on the Twentieth ; this would not be “grievous Hurt” under the Definition of the Code. Rather than that, it seems preferable to have no Definition of grievous Hurt at all, after providing for the natural Classes which can be strictly defined, which are now included in maiming. The Advantage of the Alteration is, that the Punishment provided for inflicting grievous Hurt may be awarded in every Case included in the Definition of the Code, and also in other indefinable Cases, if the Court is of opinion that a like Amount of Suffering is inflicted ; nor can this operate with any Injustice to the Offender, who meant at all events to do *some* Hurt to his Victim.

47. Whoever causes any Effect by Means whereby *he* intended to cause it, or which at the Time of employing them *he* had Reason for believing to be likely cause it, is said to cause it “*wilfully*.”

This is a very important Definition. It agrees in the Main with that of the Code and with the Act of Crimes and Punishments. The Rule of English Law is, that evil Intentions may be *inferred* from evil Acts. The Commissioners dislike to leave to Inference what may be expressed by Law. The Principle is good, but the Difficulty is not surmounted either by them or here. They include in their Notion of voluntarily causing any Effect, the Case in which a Man *knows* that the Effect is likely to follow his Act. This *Knowledge*, in the great Majority of Instances, must be inferred from his Acts, just as his evil *Intention* is inferred under English Law. It is proposed to alter the Phrase to “his Reason to know” or “believe,” but there will and always must remain an Inference to be drawn from the overt Act.

48. Whoever *wilfully* does anything, without lawful Excuse, knowing or having Reason to believe that *he* may thereby do *Wrong* to any Person, or *Hurt* to any Animal, or hinder the Course of Justice, is said to do so *maliciously*.

The Act does not contain any Punishment for mere Cruelty to Animals (see Art. 480.), but the Definition of Malice should be made to include such Offences, in case it be thought right hereafter to punish them.

49. Whoever *maliciously* does anything for the sake of *wrongful Gain* to *himself* or any other Person, by *wrongful Loss* or Risk of *wrongful Loss* to another Person, is said to do so “*dishonestly*.” Whoever does anything *dishonestly*, without using Violence or causing Fear to any Person, is said to do so *fraudulently*.

The Definition of “fraudulently” in the Code does not exclude “Force” and “Fear,” and thereby differs from both the popular and technical Meanings of the Word as hitherto used. Pope says,

“If Success a Lover’s Toil attends,
Who asks if Force or Fraud obtained his Ends.”

In 3 Rep. 78. we have the Maxim,—

Quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum est. It is believed that it will be found universally in the Law Books that “Fraud” is used in contradistinction to “Force.” Where a Word is already used in a technical Sense different from the popular one, it is right to choose, and specify the One chosen ; but it appears very undesirable, where the popular and technical Meanings of a Word are the same, to give it a new Sense. It is

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proposed to substitute the Word "*dishonestly*," which has never been used in Law otherwise than generally ; and, in its popular Use, does not, so much as fraudulently, exclude the Idea of "Force." If a Robber stuns a Man with a Bludgeon, and then takes his Purse, he may, with more Propriety, according to common Language, be said to have got the Money "*dishonestly*" than "*fraudulently*." If a Thief picks a Pocket secretly, either Word is equally applicable.

50. Whoever does anything, not *maliciously*, but through Want of reasonable Care, either in undertaking or doing anything without sufficient Skill, Knowledge, or Ability, or without due Care in ascertaining its Nature and probable Consequences, or without due Care to hinder Harm, is said to do it "*heedlessly*." If the probable Consequence of *his* doing anything "*heedlessly*" may be the Loss of Human Life, *he* is said to do it "*recklessly*."

These Definitions are new. By reference to Chapter XIII. of the Code, and other Places, it will be seen that they will save much Repetition.

51. Whenever any *Wrong* is done not "*maliciously*" nor "*heedlessly*," it is said to happen "*accidentally*" or *by Mischance*.

23 52. A Statement is said to be made "*solemnly*," and a Person is said to be "*bound solemnly*" to make a Statement,

First.—When it is made on Oath before any Person having by Law Authority to take that Statement on Oath :

Secondly.—When it is made before such a Person after a Declaration which is by Law allowed to be taken instead of an Oath :

Thirdly.—When it is made after a Warning to speak the Truth, given by a Person having Authority by Law to give such Warning, and to take the Statement made after such Warning.

The Language of the Code is "made under a Sanction which is tantamount to an Oath," and does not include Statements made on Oath.

30 53. Whoever, being of the Age of Twelve Years or more, and of sound
31 Mind, and having full Understanding of the Matter on which *his* Consent is sought, and without being put in Fear of *Wrong*, directly or indirectly, gives Consent to any Person, is said to "*consent freely*," or to give "*free Consent*."

There are Two Definitions in the Code ; One of "free Consent," the other of "intelligent Consent." They are here united, and "free Consent" is made to mean what the Code means by "free intelligent Consent." The Definition of "free Consent" which is not "intelligent" seems not to be wanted.

39 54. Nothing which is within the Definition of an *Offence* shall be taken not to be an *Offence*, because it is not within the Title of the Chapter containing that Definition.

CHAPTER III.

General Principles.

The Chapter on Punishments follows next in the Code. It has been thought that the general Maxims of this Chapter ought immediately to follow the Definitions.

55. Every *Article* of this Act is to be understood to be subject to the Principles and Exceptions of this Chapter, whether or not any such Principle or Exception is repeated in such *Article*.

DIVISION I.

General Exceptions.

56. No Person is excused for any *Offence*, by reason of Ignorance of the Law.

See Note to Article 61.

57. No Person is excused for the *wilful* Commission of any *Offence*, by reason of any Motive alleged on *his* Behalf.

58. No Person is excused for any *Offence*, by reason of acting under Influence or Coercion.

These Two Articles are implied in the Code, and supported by strong Reasons in its Note B. It seems advisable to express them, and not leave them to be inferred from the Absence of any contrary Enactment ; especially considering how much the latter differs from the Principles of the English Common Law recognized in the Supreme Courts, in which this Act will hereafter be in force.

59. Nothing

59. Nothing is an *Offence* which is done by a Person who is *lawfully bound* to do it.

60. Nothing is an *Offence* which is done by a *Judicial Officer*, in the Exercise to the best of his Judgment, in good Faith, of any Power given to him by Law.

61. No Person is liable to any Punishment for any *Offence* which *he* commits, believing in good Faith, through Ignorance or Mistake of Fact, distinguishable from Ignorance or Mistake of Law, that *he* is in the Exercise of any Power given to *him* by Law.

The Code, in the corresponding Clause 63, protects from Punishment any Officer who, from Ignorance or Mistake, either of Law or of Fact, exceeds his lawful Powers. The Reporters on the Code thought that so great a Departure from One of the most generally received Principles of Law could not have been intended and proposed without any Comment or Explanation. They recommended the Introduction of Words similar to those now in this Article, in accordance with the well-known Maxim, *Ignorantia juris neminem excusat; ignorantia facti excusat*. But Mr. Macleod, one of the Authors of the Code, in the Notes on this Report sent by him to the Honourable Court, explains that the Intention of the Framers of the Code was what the Reporters thought it could not have been; and argues on behalf of the Clause in its original Form, distinguishing "between "doing a Thing merely in Ignorance of its being forbidden by Law, and doing a Thing in consequence of an honest and sincere Belief that to leave it undone would be Disobedience to the "Law." There is much Force in Mr. Macleod's Argument, and in favour of the Doctrine that an Officer acting under such Belief ought not to be punished as a Criminal, though acting illegally: but it has not appeared advisable to introduce so new a Principle without further Consideration. The Clause in its original Form has therefore been confined to Judicial Officers, corresponding to the present Law of England.

62. No Person is liable to any Punishment, as for an *Assault* or *wrongful Restraint*, or for causing *Hurt*, not being a *Maim* or *grievous Hurt*, who gives reasonable and moderate Chastisement to *his* Child, Apprentice, Ward, or Pupil.

See Act XIX. 1850, Sec. 14. Assaults and wrongful Restraints are defined in Chapter XV., Div. c.

63. No Child under Seven Years of Age is liable to any Punishment under this or any following Act for any *Offence*.

The Form of this and other similar Articles has been advisably changed, in order to obviate the Necessity for such Clauses as 82 and 100 of the Code.

64. No Child under Twelve Years of Age is liable to any Punishment under this or any following Act for any *Offence*, unless it be proved that *he* had Understanding, at the Time of committing it, to know that *he* was committing an *Offence*.

65. No Person is liable to any Punishment for any *Offence* who, at the Time of committing it, did not know, and, by reason of Unsoundness of Mind, other than that temporarily caused by Intoxication, could not know, that *he* was committing an *Offence*.

See Act. IV. 1849.

66. No Person is excused for any *Offence*, by reason of temporary unsoundness of Mind caused by Intoxication.

The Code, and also Act IV. 1849, exempt Persons who commit Crimes in a State of Intoxication not wilfully caused by themselves. It is believed that the genuine Cases in which this Defence could be set up are of exceedingly rare Occurrence; and it seems practically better to leave them, when they occur, to the Intervention of the Executive Government.

67. Except in the Case of *Treason*, the Husband or Wife, Brother or Sister, Father or Mother, Son or Daughter, or any of the Ancestors or Posterity of any *Offender*, or of any Person who is ordered to be taken into Custody, or who has escaped from lawful Custody, is not liable to be punished for harbouring such *Offender* or Person, or for not giving Information of the Commission of a *Felony* by such *Offender*, or for not helping to take such *Offender* or Person into Custody.

This Exception is repeated in Clauses 107, 124, 177, 178, 206 of the Code; it seems better, therefore, to place it as a general Principle here.

68. Nothing is an *Offence* which is Harm not meant to cause Death, and which is done in good Faith for the lawful Benefit of the Person harmed, and with the *free Consent* either of the Person harmed, or, if the Person harmed be under Twelve Years of Age, or of unsound Mind, with the *free Consent* of *his* lawful Guardian.

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69. Nothing is an *Offence* which is Harm not meant to cause Death, and which is done in good Faith for the lawful Benefit of the Person harmed, in any Emergency in which the *free Consent* mentioned in Article 68 cannot be sought or given.

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70. Nothing is an *Offence* which, although within the Letter of the Law, is too slight and trivial to be within the Evil for Hindrance or Remedy whereof the Law is made.

This Article, which answers to the old Maxims, *De minimis non curat lex, Apices juris non sunt iura*, is open to an Objection of the same Kind as that brought against Clause 73 of the Code, in that it contains no real Definition of the Acts excepted. This inherent Defect can be supplied only in the Act of Criminal Procedure, by which Judges and Magistrates may be warranted to exercise their own Discretion in refusing to take cognizance of these extreme Cases, and in instructing their ministerial Officers of Justice accordingly.

DIVISION 2.

Criminal Agency.

Many of the Articles of this Division are otherwise provided for in Chapter IV. of the Code, "On Abetment;" but the Arrangement, and in some Degree the Principles, are different.

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71. Where an *Offence* is committed by several Acts, every Person who, either alone or with any other Person, is a *Principal* concerned in any such Act, in order to further the Commission of the *Offence*, commits the *Offence*.

72. If Two or more Persons join in a common Design, being the Commission of an *Offence*, and are *Principals* concerned in endeavouring to commit it, all are deemed to *abet* any Act done by any One or more of them in furtherance of the *Offence*.

See Act of Crimes and Punishments, Page 7, Art. 15.

88 to 97

73. Whoever *abets* an *Offence* is liable, in default of any special Provision to the contrary, to the same Punishment, if the *Offence* is committed, as if *he* had committed the *Offence*; and, if the *Offence* is not committed, to the same Punishment, if any, to which *he* would be liable for an Attempt to commit the *Offence*; and, in default of any special Provision to the contrary, every Penal Provision of this Act is to be understood to apply to *Abettors* as well as to *principal Offenders*, whether or not they are expressly mentioned, as fully as if every such Provision applied by express Words to *Abettors*.

See Act of Crimes and Punishments, Page 7, Art. 13.

74. A Person is deemed to commit or *abet* an *Offence*, although the Manner of the Commission of it is not the same as that by which *he* meant to commit or *abet* it; or although, by Mistake or *Mischance*, the *Wrong* constituting the *Offence* happens to any Person, other than the Person to whom *he* meant that it should happen.

See Act of Crimes and Punishments, Page 7, Art. 12.

75. If any *Wrong* is *maliciously* caused, which is not meant to happen to One Person rather than another, the *Offence* is the same as if the *Offender* had meant the *Wrong* to happen to the Person to whom it does happen.

76. A Person is deemed to commit or *abet* any *Offence*, which is caused by, and is a probable Consequence of the Commission, or endeavour at the Commission of an *Offence* which *he* meant to commit or *abet*.

77. Whoever, meaning to commit an *Offence*, commits instead thereof another *Offence*, punishable not less severely, which *he* did not mean to commit, and which is not a probable Consequence of endeavouring to commit the *Offence*, which *he* meant to commit, is liable to be punished, as if *he* had committed the *Offence* which *he* meant to commit.

See 7th Report of Commissioners on Criminal Law, Pages 26–29.

78. Whoever, meaning to commit an *Offence*, commits instead thereof another *Offence*, punishable less severely, which *he* did not mean to commit, is liable to be punished as if *he* meant to commit the *Offence* which *he* did commit.

79. Whoever,

79. Whoever, in the *wilful* Commission of an *Offence*, commits also another *Offence* which *he* did not mean to commit, is liable to be punished for each *Offence*, as if *he* had not committed the other.

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The Code, Clause 58, provides that Punishments shall not be cumulative, unless otherwise provided. This Provision is not adopted. But see Articles 114, 115.

80. Where an *Offender* does what *he* meant to do, but *his* Act, by reason of *his* Ignorance or Mistake of Fact, distinguishable from Ignorance or Mistake of Law, is a different *Offence* from that which *he* meant to commit, *he* is liable to be punished, as if *he* had committed the *Offence* which *he* meant to commit.

81. No Person is deemed to *abet* an *Offence*, who, with the Knowledge of the *principal Offender*, abandons *his* Purpose before the Commission of it, and uses *his* utmost Endeavour to hinder the Commission of it.

See Act of Crimes and Punishments, Page 7, Art. 11.

82. No Person shall be punished for *abetting* any *Offence*, who has not *abetted* it otherwise than by Consent or Counsel, unless an Attempt is made to commit the *Offence*.

83. Whenever any Person is justified or excused for any Act, every Person helping *him* in good Faith, in furtherance of that Act, is also justified or excused.

DIVISION 3.

The Right of Defence.

84. Every Person has a Right, where *he* cannot be sufficiently defended by the *Officers of Justice*, to defend *himself*, and any other Person, from any *Felony* or *Assault*, or from *wrongful Loss*, or from any Endeavour to commit a *Felony* or *Assault*, or to cause *wrongful Loss*, except as *herein-after* provided.

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85. The Right of Defence begins as soon as the Danger begins, and lasts as long as the Danger lasts.

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86. The Right of Defence allows the *wilful* causing of Death to the *Offender*, if there is reasonable Ground to think it necessary for hindering the Commission of a *Capital Offence*, unless in the Case of a Person defending *himself* from an *Assault*, or an Endeavour to commit an *Assault* which *he* sought or provoked.

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This appears to be the most satisfactory Limitation, coupled with a subsequent Provision, that, if Death is caused in Self-defence, where it is not strictly justifiable, it shall be punished only as extenuated Manslaughter. The Question is a very difficult one.

By Regulation XX. 1817 (Bengal). Persons who slay Murderers, Robbers, or Thieves in their own Defence, or in Defence of their Property, are not to be proceeded against. The Law of the Supreme Courts is in 9 Geo. 4. C. 74. S. 58.

"No Punishment shall be incurred by any Person who shall kill another in his own Defence, or in any Manner without Felony."

See the Notes to Arts. 30 to 52, 4th Report of Commissioners on Criminal Laws.

The Code in Clauses 76 and 79 extends the Right of causing Death in Self-defence to all Fear of grievous Hurt, &c., and in certain great Crimes against Property, but punishes Death caused in Self-Defence when not justified with Fourteen Years Imprisonment.

87. In every other Case the Right of Defence allows the *wilful* causing of any Harm but Death to the *Offender*, which there is reasonable Ground to think necessary for hindering the Commission of the *Offence*.

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88. A Person has no Right of Defence while committing or endeavouring to commit a *Felony*.

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89. The Right of Defence, in no Case, excuses more Harm than there is reasonable Ground to think necessary for the Purpose of Defence.

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90. There is no Right of Defence against any Act of an *Officer*, for which *he* is not punishable.

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91. There is no Right of Defence against any Act of an *Officer*, which *he* performs, or makes Show of performing or endeavouring to perform, in the Discharge of *his* public Duty, and which *he* performs, or endeavours to perform,

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with the Forms required by Law for such an Act, when performed in the Discharge of *his* public Duty.

84 92. No Person shall be punished for anything which *he* does in the lawful Use of the Right of Defence.

84 93. No Person shall be punished for any *Offence* which *he* commits, believing in good Faith, through Ignorance or Mistake of Fact, distinguishable from Ignorance or Mistake of Law, that *he* is in the lawful Use of the Right of Defence.

83 94. No Person shall be punished for causing any Harm to any other Person than the Person against whom *he* is using the Right of Defence, where that Harm is not greater than *he* is entitled to cause to the Person against whom *he* is using the Right of Defence, if *he* could not fully use that Right, without Danger of causing the like Harm to such other Person.

The Code adopts this Principle only where the Right of Defence extends to causing Death.

CHAPTER IV.

Punishments.

40 95. The Punishments to which *Offenders* are liable under this Act are,—

First.—Death; which is by hanging the *Convict* by the Neck until *he* is dead.

Secondly.—Transportation; which is personal Restraint out of *India* in some Place sanctioned from Time to Time by Law; and may be for Life or for any Term of Years.

See Note to Art. 97.

Thirdly.—Banishment; which is out of *India*, and is always for Life.

Fourthly.—Imprisonment; which may be for Life, or for any Term of Years, or otherwise, and is of Three Kinds:

1. Solitary.
2. Severe.
3. Simple.

Fifthly.—Forfeiture; which is of all *Property* of the *Offender*, and is of Two Kinds:

1. Absolute.
2. For Life.

The only Offences to which the Punishment of Forfeiture is annexed in this Act are Rebellion, raising an armed Force to overcome the Government, and riotous Meetings at which Felonies are committed, abetted by Proprietors of Land.

Sixthly.—Fine.

Seventhly.—Whipping; to which Females are not liable.

96. Each of these Punishments is deemed more severe than any one mentioned after it; and, of Two *Offences*, that one is deemed the greater which renders the *Offender* liable to the more severe Punishment.

43 97. Every Sentence of Transportation, otherwise than for Life, carries with
44 it a Sentence of Banishment for Life, to begin at the End of the Term of
45 Transportation.

It is thought expedient that a Native of India, if transported, should not be allowed to return to this Country; hence all Sentences of Transportation in the Company's Courts are now for Life. By adopting this Article, Transportation for Terms of Years may be awarded without infringing this Principle; and it is desirable not to lose this Modification of Punishment.

98. No Person, whose Father or Mother, Grandfather or Grandmother was not of Asiatic Race, is liable to Imprisonment in *India* for more than Five Years, unless *he* is a *Convict*, who has returned *unlawfully* from Transportation or Imprisonment.

99. No Person, whose Father and Mother, Grandfather and Grandmother were all of Asiatic Race, is liable to be transported for any Term less than Ten Years; but this Restriction shall not be deemed in any Case to change the Character of an *Offence* from a *Felony* to a *Misdemeanor*.

Transportation to a Native is said to be more dreadful than Death. A European would probably think it a less severe Punishment than one of Imprisonment in this Country for the
same

some Term. Imprisonment may therefore be probably awarded to a Native Convict when the more appropriate Punishment of a European for the same Offence would be Transportation.

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Care has been taken to annex Transportation, as an alternative Punishment, to every Offence which may be punished by Imprisonment for more than Five Years. The practical Effect of Arts. 98 and 99 therefore is that a European will be transported for every Felony for which Five Years Imprisonment is not thought Punishment enough; and that an Asiatic is not liable to Transportation except for the most heinous Classes of Offences. The Restriction of these Privileges to the Third Generation is of course arbitrary; it will be necessary in the Code of Procedure to define how they are to be claimed and decided. No Definition of "Race" has been attempted. The Code uses the Term "Blood," and defines "a Person of Asiatic Blood" to be "one whose Father or Grandfather, Mother or Grandmother, was of Asiatic Birth, and, as far as can be discovered, of pure Asiatic Extraction." This affords very little Help. See Clauses 32, 43, and 44 of the Code.

100. Where an *Offender* is liable to Death, *he* is also liable to "Transportation or Imprisonment for Life.

101. Where an *Offender*, not having committed a *Capital Offence*, is liable to Transportation or Imprisonment for Life, *he* is also liable, subject to the Restrictions of Articles 98 and 99, to Transportation or Imprisonment for any Term not less than Seven Years which the *Court* before which *he* is convicted in its Discretion awards, unless it is otherwise specially provided.

The Code in a great many Instances specifies the smallest as well as the greatest Punishment which the Court can award. It is believed that this Restriction would be mischievous in all but the highest Classes of Offences.

102. When an *Offender* is liable to Transportation or Imprisonment for any specified Term, but not for Life, *he* is also liable, subject to the Restrictions of Articles 98 and 99, to Transportation or Imprisonment for any shorter Time which the *Court* before which *he* is convicted in its Discretion awards, unless it is otherwise specially provided.

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103. When an *Offender* is liable to Imprisonment, and the Kind is not specified by Law, *he* is liable to Imprisonment of any Kind, or to Imprisonment partly of one Kind and partly of another Kind, as the *Court* in its Discretion awards. All Imprisonment is with or without Hard Labour, as the *Court* awards.

104. When a Boy under Twelve Years of Age is liable to Imprisonment, the *Court* before which he is convicted may in its Discretion, instead of sentencing him to Imprisonment, order him to be Once, Twice, or Thrice privately whipped, and to be imprisoned or otherwise kept in safe Custody between the Whippings, if more than One is awarded.

105. When an *Offender* is liable to absolute Forfeiture *he* is also liable to Forfeiture for Life, and also to Forfeiture of Part only of *his Property* as the *Court* in its Discretion awards.

106. A Sentence of Forfeiture disables the *Convict* from gaining or holding any *Property* otherwise than for Behoof of the Government; but, when the Forfeiture is for Life only, a Right to *Property* after the Death of the *Convict* may be derived through *him*.

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107. The unforfeited *Property* of every Person sentenced to Transportation or Banishment, or to a Sentence of Death, afterwards commuted for Transportation, shall descend and be distributed, after Satisfaction of any Fine to the Payment of which *he* has been sentenced, as if *he* had died at the Time of the Sentence.

Articles 106, 107 belong perhaps rather to the Law of Property than to this Act.

108. When an *Offender* is liable to a limited Fine, *he* is also liable to any less Fine which the *Court* in its Discretion awards, unless it is otherwise specially provided. Where the Fine is not limited by the Act it may be such as the *Court* awards.

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109. Every Sentence of Fine carries with it, unless the *Court* otherwise orders, a Sentence of simple Imprisonment until the Fine is paid, to begin after the Execution of any other Sentence awarded against the *Convict*.

51 to 57

The Code awards fixed Terms of Imprisonment in default of Payment of Fine. There seems to be no Reason why a *Convict*, imprisoned for Nonpayment of a Fine, should be released on easier Terms than a Debtor imprisoned on a Civil Liability. See Art. 111.

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110. When a Fine is imposed upon a Child under the Age of Twelve Years, the Parent or Guardian is liable to the Payment of it; and Payment thereof may be enforced, as if the Parent or Guardian had been sentenced to Payment of the Fine.

This Article is quite new, as is also Article 117. By Article 64 a Child under 12 Years of Age cannot be fined unless it has Understanding enough to know that it is committing an Offence. In that Case it seems not unreasonable to fine the Parents, and so give a Motive for inducing them to keep their Children from evil Courses.

111. The Court, which sentences any Convict to Fine, may in its Discretion order *his* Discharge from Imprisonment to which *he* is liable for Nonpayment of the Fine, when it is satisfied that *he* is unable to pay any Part of it then unpaid.

112. The Death, Transportation, or Banishment of a Convict, or *his* Discharge from Imprisonment, does not discharge any Property liable for Payment of *his* Debts from the Burden of any Fine laid on *him*, and unpaid.

113. The Court which sentences any Convict to Fine may award the whole or any Part of such Fine to any Person to whom any *Wrong* is done by the Convict.

See 58
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114. If an Offence is committed with aggravating Circumstances, which render the Offender liable to a different Punishment than that to which *he* would be liable for the simple Offence, any of which aggravating Circumstances alone constitutes an Offence, the Offender is not liable to be punished separately for the simple Offence and also for the aggravating Circumstance.

115. If an Offence is necessarily committed in committing another and greater Offence, the less Offence is merged in the greater.

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116. In doubtful Cases an Offender may be convicted in the Alternative of having committed an Offence under One of several Articles, and in such Case is liable to any Punishment which is not more severe than that to which *he* is liable for each of the Offences mentioned in such Articles.

117. The Parent or Guardian of any Child under the Age of Twelve Years, which commits a *Felony*, is liable to Fine; but no Person is punishable under this Article and also as an *Abettor* of the Offence.

This Article goes further than Article 110, and renders the Parent or Guardian liable to Fine, if the Child commits a *Felony*, whether or not the Child have sufficient Understanding to be criminally liable in his own Person. Thus, in the Case of Felonies, the Parent is made responsible (so far as Fine goes) for the ignorant Wantonness of his Child, as well as for his malicious Acts.

118. Every Person who is excused from being punished for any Offence by Reason of Unsoundness of Mind shall be kept in safe Custody in such Place and Manner as the Governor thinks fit and the Court orders, until the Order of the Governor is known. No Person so kept in safe Custody is entitled to be discharged on being restored to Soundness of Mind, unless by the Order and at the Discretion of the Governor.

See Act IV. 1849.

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119. The Governor may, without the Consent of the Convict, change any Punishment to which *he* is sentenced, for any other less severe Punishment to which *he* is liable for any Offence.

The wording of Clause 45 of the Code might raise the Inference that the Government could not substitute a milder Punishment without the Consent of the Offender. 12 and 13 Vict. c. xxvii. O'Brien's Case.

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120. The Governor may, in his Discretion, with the Consent of the Convict, change any Punishment to which *he* is sentenced, for any more severe Punishment, except Death, to which *he* is liable for any Offence.

This will enable the Government, with the Consent of the Convict, to substitute Transportation or Banishment for Imprisonment.

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121. The Governor may, at any Time, pardon any Convict, or forgive *him* any Part of the Punishment to which *he* is sentenced, either unconditionally or on any Conditions to which the Convict agrees. Any conditional Pardon or Forgiveness of Punishment is void on Breach of any Condition on which it is granted.

Offences against the State.

122. A Person *owing Allegiance* to the *Queen*, means a Person who is either born within *Her Majesty's* Dominions, or is abiding there under the Protection of the *Governor*.

Some Acts against the State, such as making War, &c., are Offences only when committed by a Person *owing Allegiance* to the Queen, and differ in that respect from other Offences, which are punishable alike in a Subject and Foreigner. It seems advisable, therefore, to introduce this Definition.

123. *Mutiny* is the Rising or Resistance of any Man or Body of Men engaged to serve under a superior *Officer* against his or their superior *Officer*, or the *wilful* Refusal without lawful Excuse to perform his or their Duty in obedience to the *binding Order* of such superior *Officer*.

124. A *mutinous Meeting* is a Meeting of Two or more Persons for the Purpose of planning or committing *Mutiny*.

125. Whoever, *owing Allegiance* to the *Queen*, by any overt Act rebels or raises War or endeavours to raise War against the *Queen* or *Governor* of any Part of *India*, or *abets* the raising of such War, or is in any way adherent to the *Queen's* Enemies, is guilty of *Treason*, and is liable to suffer Death as a *Traitor* and to Forfeiture of all *his Property*.

The Code advisedly omitted all Notice of treasonable Offences. See Note C. The Reasons there given have not appeared of sufficient Weight to warrant this Course.

126. Words spoken do not constitute an overt Act of *Treason*, unless they are spoken in furtherance of any *traitorous* Purpose.

127. Unpublished Writings do not constitute an overt Act of *Treason*.

128. Whoever, without lawful Authority, raises or *abets* the raising of an armed Force in *India* for procuring by Force and Arms any Change in the Government of any Part of *India*, or for overawing the *Governor* of any Part of *India* in any way, is liable to suffer Death as a *Traitor*, and to Forfeiture of all *his Property*.

129. Whoever *wilfully* draws or endeavours to draw any Person *owing Allegiance* to *Her Majesty* from such Allegiance, or from *his* Duty of Obedience to the *Governor* of any Part of *India*, is guilty of *Subornation of Treason*, and is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

See Act XIV. 1849.

130. Whoever conceals *his* Knowledge of any *Treason* or intended *Treason*, or of any *Subornation of Treason* or intended *Subornation of Treason*, or harbours any *Traitor*, or rescues or helps the Escape of any *Traitor* from lawful Custody, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

131. Whoever, by Words spoken, written, or printed, *maliciously* counsels the Resistance by Force of any Law or lawful Authority, is liable to Transportation or Imprisonment for Seven Years, and also to Fine.

132. Whoever, by Words spoken, written, or printed, or by Signs or Drawings, *maliciously* stirs up or endeavours to stir up any Person to disobey the Law, is liable to Imprisonment for Three Years, or to Banishment, and in either Case also to Fine.

133. Whoever *assaults* or makes *Show of assaulting* the Governor General of *India*, or the Governor, Deputy Governor, or Lieutenant Governor of any Presidency or Place in *India*, or any Member of the Council of *India*, or of any Presidency or Place in *India*, in order to compel or prevail on them or any of them to exercise or refrain from exercising any of their lawful Powers, is liable to Transportation or Imprisonment for Seven Years, and also to Fine.

134. Whoever, without lawful Authority, raises War, or endeavours to raise War, or *abets* the raising of War, against any Foreign Sovereign or State, otherwise than in repelling Invasion or Attack by the Forces of such Sovereign

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or State, is liable to Imprisonment for Three Years or to Banishment, and in either Case also to Fine.

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135. Whoever, without lawful Authority, contrives or prepares to make Depredations in the Territories of any Foreign Sovereign or State, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

136. Whoever *unlawfully* receives any Property, knowing the same to have been taken from the Territories of any Foreign Sovereign or State in the Prosecution of *unlawful* War or Depredation, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

See Act X. 1839.

137. Whoever, *owing Allegiance* to the *Queen*, enlists or engages himself to serve any Foreign Sovereign or State as a Soldier or Sailor, after any Prohibition issued and proclaimed by the *Government* of any Part of *India*, is liable to Imprisonment for Three Years, and also to Fine.

138. Whoever, in any Part of *India*, hires or procures any Person to enlist, or endeavours to hire or procure any Person to enlist, in the Service of any Foreign Sovereign or State, as a Soldier or Sailor, after any Prohibition issued and proclaimed by the *Governor* of any Part of *India*, is liable to Imprisonment for Three Years, and also to Fine.

139. Whoever, in any Part of *India*, fits out, equips, or arms, or endeavours to fit out, equip, or arm, any *Vessel*, in order that it may be employed as a *Vessel* of War in the Service of any Foreign Sovereign or State, after any Prohibition issued and proclaimed by the *Governor* of any Part of *India*, is liable to Imprisonment for Three Years, and also to Fine; and the *Vessel*, with its Tackle and Furniture, and all Arms, Ammunition, and Stores on board thereof, is forfeited.

140. Whoever, after any Prohibition issued and proclaimed by the *Governor* of any Part of *India*, exports or attempts to export any Arms or Ammunition of War to any Foreign Territory, is liable to Imprisonment for Three Years, and also to Fine; and the Arms and Ammunition exported or attempted to be exported after such Prohibition are forfeited.

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141. Whoever *abets Mutiny* in Two or more Men belonging to the Military or Naval Forces of the *Queen* or of the East India Company is liable to Transportation or Imprisonment for Life, if Mutiny follows thereon; and if not, for Seven Years; and in either Case also to Fine.

142. Whoever *abets* any *mutinous Meeting* among the Military or Naval Forces of the *Queen* or the East India Company, is liable to Imprisonment for Three Years, and also to Fine.

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143. Whoever stirs up, or endeavours to stir up, Disaffection to the *Queen* or *Government* of any Part of *India*, among any Body of Men belonging to the Military or Naval Forces of the *Queen* or East India Company, is liable to Imprisonment for Three Years, and also to Fine.

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144. Whoever *wilfully abets* an *Assault* by any Soldier or Sailor in the Service of the *Queen* or the East India Company on his superior *Officer*, is liable to Imprisonment for Three Years, if such *Assault* is thereupon made; and if not, for One Year; and in either Case also to Fine.

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145. Whoever *abets* the Desertion of any Soldier or Sailor from the Service of the *Queen* or of the East India Company is liable to Imprisonment for Three Years, if Desertion follows thereon; and if not, for One Year; and in either Case also to Fine.

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146. Whoever harbours any Soldier or Sailor in the Service of the *Queen* or the East India Company, knowing that he has deserted, is liable to Imprisonment for Three *Months*, and also to Fine of Five hundred Rupees.

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147. Whoever *abets* any Breach of the Rules called the Articles of War, or of the Rules for securing the Observance of Discipline in the Indian Navy by any Soldier or Sailor in the Service of the *Queen* or of the East India Company,

Company, is liable, if such Breach of the said Rules is committed, to Imprisonment for Six *Months*; and if not, to Imprisonment for Three *Months*; and in either Case also to Fine.

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126

148. Whoever, not being a Soldier or Sailor in the Service of the *Queen* or the East India Company, wears any Uniform or any Garb like any Uniform used by such a Soldier or Sailor, in order that any Person may believe that *he* is such a Soldier or Sailor, is liable to Imprisonment for Three *Months*, and also to Fine of Five hundred Rupees.

CHAPTER VI.

Offences on the High Seas.

There is no Chapter corresponding to this in the Penal Code.

149. All Persons who on the High Seas, or elsewhere within Ebb and Flow of the Sea, commit any of the following Offences, are *Pirates* and guilty of *Piracy*; that is to say,

Who without Commission or Authority from the *Queen* or the East India Company, or from any Foreign Sovereign or State whereunto they are subject, make War, or attack any *Vessel*, or any Fort, Harbour, or Place, otherwise than in Reprisal and lawful Self-defence:

Who forcibly and *maliciously* board or enter any *Vessel*, and take, destroy, injure, or throw overboard any Part of the Tackle or Furniture, Goods or Merchandise, without lawful Excuse:

Who *maliciously* carry away or take on board of any *Vessel* any Person for the Sake of *his* being sold to Slavery, or otherwise treated as a Slave:

Who knowingly trade with or furnish any Provisions, Stores, or Ammunition of War to any *Pirate*, or fit out any *Vessel* for trading with or supplying any known *Pirate*.

150. Whoever commits *Piracy* is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

151. Whoever, not being lawfully intrusted with the Command or Charge of any *Vessel* on the High Seas, or elsewhere within Ebb and Flow of the Sea, forcibly takes possession thereof, or *assaults* the Master, or other Person having lawful Charge of the *Vessel*, for the Purpose of unlawfully gaining Possession thereof, is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

152. Every Seaman or other Person employed upon any *Vessel* on the High Seas, or elsewhere within Ebb and Flow of the Sea, who *assaults* the Master, or other Person being the superior *Officer* of the *Offender*, is liable to Imprisonment for One Year, and also to Fine.

153. Every Seaman or other Person employed or embarked upon any *Vessel* on the High Seas, or elsewhere within Ebb and Flow of the Sea, who *maliciously* destroys or injures any Part of the *Vessel* or of its Tackle or Furniture, or who *maliciously* does any Act, whereby in either Case the Safety of the *Vessel* or Lives of the Crew are endangered, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

154. Every Seaman or other Person employed or embarked upon any *Vessel* on the High Seas, or elsewhere within Ebb and Flow of the Sea, who makes or *abets* any *mutinous Meeting* on board thereof, or endeavours to excite any of the Crew to any Act of *Mutiny*, is liable to Imprisonment for Three Years, and also to Fine.

155. Every Seaman or other Person employed upon any *Vessel* on the High Seas, or elsewhere within Ebb and Flow of the Sea, who without lawful Excuse disobeys any *binding Order* of the Master or other his superior *Officer* where, by such Disobedience, the Safety of the *Vessel* or Lives of the Crew are endangered, is liable to Imprisonment for Three Years, and also to Fine.

156. Every Seaman or other Person employed upon any *Vessel* on the High Seas, or within Ebb and Flow of the Sea, who without lawful Excuse disobeys

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any *binding Order* of the Master or other his superior *Officer*, is liable to Imprisonment for Three *Months*, and also to Fine.

157. Every Person who commits any *Offence* on board of any *Vessel* on the High Seas, or within Ebb and Flow of the Sea, may be confined on board of such *Vessel* by Authority of the Master or Person having Charge thereof, until the *Vessel* comes to Port, and is further liable to the Punishment which is provided for such *Offence*.

This Article, perhaps, belongs rather to the Act of Procedure.

CHAPTER VII.

Riot and Brawling.

127 158. When Three or more Persons meet or continue together with common
128 Intent to execute any *unlawful Purpose*, with Force and Violence, or in such Manner as to cause reasonable Belief that they have such common Purpose, such Persons commit *Riot*, and the Meeting is called a *Riotous Meeting*.

The Code adopts the Number of Twelve, which the Reporters think too large. Three is the Number according to English Law.

159. A *Brawl* is when Two or more Persons quarrel or fight in any Thoroughfare or public Place without lawful Excuse.

This corresponds nearly to the English "Affray." Affray, as hitherto understood in India, corresponds more nearly to the English Offence of Riot; it seems better, therefore, to devise a new Term for this Offence.

129 160. Whoever commits *Riot* is liable to Imprisonment for One Year, if the
130 *unlawful Purpose* is wholly or partly executed, and if not, for Six *Months*; and in either Case also to Fine.

161. Every Zemindar, Talookdar, or other Proprietor of Land, who *abets* a *Riotous Meeting*, is liable, if any *Felony* is committed at such Meeting, to Forfeiture, beside any Punishment to which *he* may be liable as an *Abettor* of such *Felony*.

130 162. Whoever *wilfully* joins or continues in a *Riotous Meeting*, knowing that
132 a *binding Order* for its Dispersion has been given by any *Officer*, is liable to Imprisonment for Two Years, and also to Fine.

163. Whoever commits *Riot*, after arming *himself* with any Weapon with Intent to commit *Riot* or *Felony*, or while armed with any Weapon for shooting, stabbing, or cutting, is liable to Imprisonment for Three Years and also to Fine.

133 164. If any *Capital Offence* is committed at any *Riotous Meeting*, every
136 Person who at the Time of the Commission of the *Capital Offence* is present, abetting the *Riotous Meeting*, is liable to Imprisonment for Three Years, and also to Fine.

165. Whoever *maliciously* or wantonly provokes any Person, meaning or having Reason to believe it likely that *he* will thereby cause a *Riotous Meeting* is liable, if a *Riotous Meeting* is thereby caused, to Imprisonment for One Year, and also to Fine.

As an Abettor of the Riotous Meeting, he would be liable, without this Article, to Six Months Imprisonment only, if no Offence is committed by the Riotous Meeting.

166. Whoever, while committing *Riot*, commits any *Offence* which, when committed by a Person not committing *Riot*, is a *Misdemeanor* punishable by Imprisonment for not more than One Year, or by Fine, either absolute or limited, is liable to Imprisonment for Two Years, and also to Fine.

167. Whoever, while committing *Riot*, commits any *Offence* which, when committed by a Person not committing *Riot*, is a *Misdemeanor* punishable by Imprisonment for more than One Year, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

168. Whoever, while committing *Riot*, commits *Offence* which, when committed by a Person not committing *Riot*, is a *Felony*, being neither a *Capital Offence*

Offence, nor punishable by Transportation for Life, is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

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The Felonies punishable by Transportation for Life, which become capital when committed by Rioters, are specified in detail. See Arts. 348, 358, 379.

169. Whoever is guilty of *Brawling* is liable to Imprisonment for One Month, and also to Fine of Two hundred Rupees.

CHAPTER VIII.

Abuse of Official Power.

170. The Word "*Bribe*" means any Money or Thing of which the Value can be estimated in Money, and also any Reward, Gift or Favour, of which the Value cannot be estimated in Money, granted or promised corruptly to any Person in consideration of *his* doing or forbearing to do anything.

138

171. Whoever takes on *himself* to act as an *Officer* is liable to Punishment for any Misbehaviour as an *Officer*, whether or not lawfully holding the Office.

172. Every *Officer* is liable to the Punishment of any *Offence* committed by *his* Deputy or Agent by *his* Authority or with *his* Consent; and for this Purpose every Person intrusted with the Performance of any official Duty by any *Officer* is deemed *his* Deputy or Agent, whether or not holding any lawful Appointment from *him*.

173. Every *Officer* who *maliciously* abuses *his* Authority as such *Officer* for any *unlawful* Purpose, or *maliciously* refuses or neglects to perform *his* Duty as an *Officer*, is liable to Imprisonment, for Three Years if *he* is a *Judicial Officer*, and if not, for One Year, and also in either Case to Fine.

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174. Every *Officer* who directly or indirectly takes, asks, or endeavours to get corruptly from any Person for *his* own Behoof, or for Behoof of any other Person, any *Bribe* to do or forbear to do anything in discharge of his Office, or which *he* is enabled to do or to leave undone by reason of his Office, is liable to Imprisonment, for Three Years if *he* is a *Judicial Officer*, and if not, for Two Years, and in either Case also to Fine.

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The Code includes in the same Class of Offenders Persons expecting to be public Servants. This appears too vague.

175. Every *Officer* who *abets* any Person in directly or indirectly taking, asking, or endeavouring to get corruptly from any other Person for *his* own Behoof, or for Behoof of any other Person, any *Bribe* to use real or pretended personal Influence in prevailing on such *Officer* to do, or forbear to do anything in discharge of *his* Office, or which *he* is enabled to do or to leave undone by reason of his Office, is liable to Imprisonment for Three Years, if *he* is a *Judicial Officer*, and if not, for Two Years, and in either Case also to Fine.

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176. Every *Officer* who *maliciously* prepares any *Document* incorrectly which it is *his* Duty to prepare, or *maliciously* makes any false Entry in or upon any *Document*, or *maliciously* certifies any *Document* to be a true Copy of any *Document*, or any Part thereof, knowing the same to be untrue, is liable to Imprisonment for Five Years, if *he* is an *Officer* of a *Court of Justice*, and if not, to Imprisonment for Three Years, and in either Case also to Fine.

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177. Every *Ministerial Officer* who, in breach of *his* Duty, *wilfully* neglects, without lawful Excuse, to arrest any Person charged with, or suspected or convicted of any *Offence*, is liable to Imprisonment, which may be for Two Years if the *Offence* is a *Felony*, and for One Year if it is a *Misdemeanor*, and in either Case also to Fine.

178. Every *Officer* who, in breach of *his* Duty, *wilfully* suffers any Prisoner in *his* Charge to escape, is liable to Imprisonment;

For Five Years if the Prisoner is a Prisoner of State, or of War, or a convicted *Traitor*;

For Three Years if the Prisoner is a convicted *Felon* :

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For Two Years if the Prisoner is charged with *Felony* or convicted of *Misdemeanor* ;

For One Year if the Prisoner is charged with a *Misdemeanor* only ;
and in any of these Cases is liable also to Fine.

179. Every *Ministerial Officer* who, in breach of *his Duty*, heedlessly suffers a y Prisoner in *his Charge* to escape, is liable to Imprisonment,

For One Year if the Prisoner is a Prisoner of State or of War, or a convicted *Traitor* ;

For Six *Months* if the Prisoner is a convicted *Felon* ;

For Three *Months* in any other Case ;

and in any of these Cases is liable also to Fine.

180. Every *Officer*, who wilfully misbehaves *himself* in *his Office* in any way not punishable by any other *Article*, is liable to Fine.

CHAPTER IX.

Contempt of Lawful Authority.

152 181. Whoever absconds, in order to hinder Service on *him* of a lawful Summons or Notice from any *Officer*, is liable to Imprisonment for One *Month*, and also to Fine of Five hundred Rupees.

153 182. Whoever in any Manner wilfully hinders the Service on *himself*, or on any other Person, of any lawful Warrant, Summons, or Notice from any *Officer*, or wilfully hinders the lawful Publication of any such Warrant, Summons, or Notice, or wilfully hinders any lawful Proclamation, is liable to Imprisonment for One *Month*, and also to Fine of Five hundred Rupees.

155 183. Whoever, being lawfully bound to appear personally, or by an Agent, at a certain Place and Time, in obedience to a binding Order from any *Officer*, refuses or wilfully neglects without lawful Excuse so to appear, or departs from the Place where *he* is bound so to appear when it is not lawful for *him* to depart, is liable to Imprisonment for Six *Months*, and also to Fine.

156 184. Whoever, being lawfully bound to bring or deliver any *Document* to any *Officer*, refuses or wilfully neglects without lawful Excuse so to bring or deliver it, is liable to Imprisonment for Three *Months*, and also to Fine.

157 185. Whoever, being lawfully bound to give any Notice or to furnish any Information to any *Officer*, refuses or wilfully neglects without lawful Excuse to give such Notice or furnish such Information, in the Manner and at the Time required by Law, is liable to Imprisonment for One *Month*, and also to Fine of Five hundred Rupees.

158 186. Whoever, being lawfully bound to furnish Information on any Subject to any *Officer*, furnishes Information on that Subject which *he* knows to be false, is liable to Imprisonment for Six *Months*, and also to Fine.

159 187. Whoever refuses to bind *himself* to make any Statement solemnly, when required so to bind himself by the binding Order of an *Officer*, is liable to Imprisonment for Six *Months*, and also to Fine.

160 188. Whoever, being lawfully bound to make any Statement solemnly on any Subject to any *Officer*, refuses to answer any Question lawfully put to him touching that subject by such *Officer*, is liable to Imprisonment for Six *Months*, and also to Fine.

161 189. Whoever, being lawfully bound to sign any Statement made by *him*, refuses to sign it in obedience to any binding Order of an *Officer*, is liable to Imprisonment for Six *Months*, and also to Fine.

162 190. Whoever, being lawfully bound to make any Statement solemnly to any *Officer*, states solemnly to such *Officer* as true that which *he* knows or believes to be untrue, or which *he* does not know to be true, touching that Subject, is liable to Imprisonment for Two Years, and also to Fine.

163 191. Whoever gives to any *Officer* any Information which *he* knows to be untrue, meaning or having Reason to believe it to be likely that such untrue Information may cause such *Officer* to use *his* lawful Power in *wrong* of any Person,

Person, or to the Hindrance of Justice, is liable to Imprisonment for Six Months, and also to Fine. No. of the Penal Code

192. Every Person who wilfully hinders or endeavours to hinder any Officer from exercising any lawful Power which he has to enter or remain in any Place, or to make any Search, or in any way to examine or put any Mark upon anything, and also every Person who wilfully causes Annoyance to such Officer in the Exercise of such lawful Power, is liable to Imprisonment for Three Months, and also to Fine of Five hundred Rupees. 164

193. Whoever offers any Resistance to the taking of any Property by the lawful Authority of any Officer is liable to Imprisonment for Six Months, and also to Fine. 166

194. Whoever wilfully hinders or endeavours to hinder or delay any Sale of Property offered for Sale by the lawful Authority of any Officer, is liable to Imprisonment for One Month, and also to Fine of Five hundred Rupees. 168

195. Whoever bids for any Property, offered for Sale by the lawful Authority of any Officer, on account of any Person, whether himself or any other, whom he knows to be under any Incapacity by Law to buy that Property at that Sale, or bids for such Property, not meaning to perform the Obligations under which he comes by such Bidding, is liable to Imprisonment for One Month, and also to Fine of Five hundred Rupees. 170

It may be doubted whether this Article ought to be retained as Part of the Criminal Law.

196. Whoever resists the lawful taking into Custody of himself, or of any other Person by any Officer, is liable to Imprisonment for Six Months, and also to Fine. 171

197. Whoever wilfully rescues, or endeavours to rescue, any Person or Property from any Custody in which that Person or Property is kept under the lawful Authority of any Officer, is liable to Imprisonment for One Year, and also to Fine. 173

198. Whoever escapes, or endeavours to escape, from any Custody in which he is kept, under the lawful Authority of any Officer, is liable to Imprisonment for Six Months, and also to Fine. 175

199. Whoever, knowing that an Officer has, in the Exercise of the lawful Power of such Officer, ordered any Person to be taken into Custody, harbours that Person, meaning to hinder or delay the taking of that Person into Custody, is liable to Imprisonment for One Month, and also to Fine of Two hundred Rupees. 177

200. Whoever knowingly harbours any Person who has escaped from Custody, in which he was kept by the lawful Authority of an Officer, is liable to Imprisonment for Three Months, and also to Fine of Five hundred Rupees. 178

201. Whoever wilfully offers any Insult or causes any Hindrance to any Officer, in discharge of his Duty as such Officer, is liable to Imprisonment for One Month, and also to Fine of Two hundred Rupees. 179

202. Whoever, knowing himself to be lawfully bound to help any Officer in the Discharge of his Duty, refuses or wilfully neglects, without lawful Excuse, to give such Help, is liable to Imprisonment for One Month, and also to Fine of Two hundred Rupees. 181

203. Whoever wilfully disobeys any binding Order, given to him or published by an Officer, and by such Disobedience endangers the public Peace, Health, Safety, or Convenience, is liable to Imprisonment for One Month, and also to Fine of Two hundred Rupees. 182

204. Whoever, directly or indirectly, threatens with Wrong any Officer, or any other Person, for the Purpose of prevailing on that Officer to do or to forbear to do anything in the Discharge of his Office, is liable to Imprisonment for Two Years, and also to Fine. 184

This Offence seems to be included in the more general one of Art. 524.

CHAPTER X.

Offences against the Administration of Justice.

- 173 205. Whoever rescues, or endeavours to rescue, any *Culprit* or *Convict* in any *Court of Justice*, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.
- 197 206. Whoever, by Force or outrageous Behaviour, hinders, or endeavours to hinder, the Business of any *Court of Justice*, is liable to Imprisonment for Six Months, and also to Fine.
- 197 207. Whoever commits any Contempt of any *Court of Justice*, by employing, any scornful, abusive, or threatening Word or Gesture, so as to be heard or seen by any *Judicial Officer* in the Performance of *his* Duty in such Court, or by gross Prevarication in making any Statement which *he* is *solemnly bound* to make, is liable to Imprisonment for Three Months, and also to Fine.
- 179 208. Whoever *wilfully* offers any Insult or causes any Hindrance to any *Judicial Officer*, or to any *Ministerial Officer*, while such *Ministerial Officer* is lawfully acting or endeavouring to act in obedience to the *binding Order* of any *Judicial Officer*, or lawfully taking or endeavouring to take any *Offender* or supposed *Offender* into Custody, is liable to Imprisonment for Six Months, and also to Fine.
- 181 209. Whoever, being *lawfully bound* to help any *Ministerial Officer* in taking or endeavouring to take any *Felon* or *Rioter*, or supposed *Felon* or *Rioter*, into Custody, or to hinder the Commission of a *Felony* or *Riot*, refuses, or, without lawful Excuse, neglects to do so, is liable to Imprisonment for Three Months, and also to Fine.
210. Whoever corruptly gives or offers to give or procure for any *Officer* a *Bribe* for *his* own Behoof, or for Behoof of any other Person, to prevail on *him* to do or forbear to do anything in discharge of *his* Office, or which *he* is enabled to do or to leave undone by reason of *his* Office, is liable to Imprisonment, for Three Years if the *Officer* is a *Judicial Officer*, and if not, for Two Years, and in either Case also to Fine.
- In Note E. pp. 36, 37, the Authors of the Code justify the Omission of any Punishment for the Offerer of a Bribe, unless it is proved that he has corrupted the Virtue of a public Servant, who, but for him, would have acted uprightly. Their Reasons, however, do not appear satisfactory.
- 139 211. Whoever directly or indirectly takes, asks, or endeavours to get corruptly from any Person, for *his* own Behoof, or for Behoof of any other Person, any *Bribe* to use personal Influence in prevailing on any *Officer* to do or forbear to do anything in discharge of *his* Office, or which he is enabled to do or to leave undone by reason of *his* Office, is liable to Imprisonment, for Two Years if the *Officer* is a *Judicial Officer*, and if not, for One Year, and in either Case also to a Fine.
- 150 212. Whoever, not being an *Officer*, unlawfully and *maliciously* takes upon himself to act as an *Officer*, or *unlawfully* and *maliciously* wears any Garb or carries any Token like any Garb or Token worn or carried by any *Officer*, is liable to Imprisonment for Six Months, and also to Fine of Five hundred Rupees.
- 102 213. Whoever conceals or keeps secret *his* Knowledge of the Intention of any other Person to commit a *Capital Felony* is liable to Transportation, or Imprisonment for Seven Years.
- 102 214. Whoever conceals or keeps secret *his* Knowledge of the Intention of any other Person to commit any *Theft* or *Embezzlement* or any *Felony*, other than *Capital Felony*, is liable to Imprisonment for Two Years.
- The Limit of the Code is an Offence punishable with One Year's Imprisonment, and the Punishment provided is One Quarter of that of the principal Offender. See 5th Report of Commissioners on Criminal Law, p. 32. According to this Act, Theft and Embezzlement are not Felonies.
- 105 215. Whoever, knowing that a *Felony*, *Theft*, or *Embezzlement* has been committed, *wilfully* neglects, without lawful Excuse, to give Information to some *Officer*

Officer of Justice, is liable to Fine, and if he is an *Officer*, also to Imprisonment for One Year

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The Code applies this to all Offences limited by a Knowledge in the Party that he is directed by Law to inform, and allows Six Months Imprisonment.

216. Whoever, knowing that an *Offence* has been committed, wilfully conceals, weakens, or withdraws, or endeavours to conceal, weaken, or withdraw, any Evidence of the *Offence*, is liable to Imprisonment, which may be—

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For Three Years, if the *Offence* is a *Capital Felony*, or *Felony* punishable with Transportation for Life :

For One Year in every other Case ; and in all Cases is also liable to Fine.

217. Whoever *unlawfully* agrees or undertakes, for any *Bribe*, Restitution, or other Consideration, to forbear to prosecute any Person for any *Felony*, *Theft*, or *Embezzlement*, committed or supposed to be committed by him, is liable to Imprisonment, which may be—

For Three Years if the *Offence* is a *Capital Felony* or *Felony* punishable with Transportation for Life :

For Two Years in every other Case ; and in all Cases is also liable to Fine.

This is called in English Law compounding a *Felony* ; it is very analogous to the Offence of Art. 216. See Act of Crimes and Punishments, Chap. V. Sec. 5. Art. 35.

218. Whoever takes or agrees to take any *Bribe*, directly or indirectly, for or under pretence of helping any Person to recover any Property taken by any *Offence*, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

See Act of Crimes and Punishments, Chap. V. Sec. 5, Art. 36.

219. Whoever, knowing that an *Offence* has been committed, harbours the *Offender*, in order to save him from lawful Punishment, or hinder the Course of Justice, is liable to Imprisonment, which may be—

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For One Year, if the *Offence* is a *Capital Felony* or *Felony* punishable with Transportation for Life :

For Three Months in every other Case ; and in all Cases is also liable to Fine.

220. Whoever knowingly harbours any *Convict* who has escaped from lawful Custody, or who has *unlawfully* returned to *India* from Transportation or Banishment, in order to save him from lawful Punishment, is liable to Imprisonment, which may be—

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For Two Years, if the *Convict's Offence* is a *Capital Felony* or *Felony* punishable with Transportation for Life :

For One Year in every other Case ; and in all Cases is also liable to Fine.

221. Every *Convict* who escapes, or endeavours to escape, from any lawful Custody in which he is kept, is liable to have the Term of his Sentence either of Transportation or Imprisonment lengthened by Two Years, or if not sentenced to Transportation or Imprisonment, or imprisoned only for Nonpayment of a Fine, is liable to Imprisonment for Two Years, besides the Imprisonment to which he may be liable for Nonpayment of the Fine, and if a *Man* is also liable to Whipping.

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222. Every transported or banished *Convict* who *unlawfully* returns to *India* is liable to Transportation or Imprisonment for Life, and also to Fine.

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223. Whenever Possession of any *Property* is got by Commission of any *Offence*, whoever *dishonestly* receives such *Property*, directly or indirectly, from the *Offender*, or helps the *Offender* to keep or dispose of such *Property*, knowing or having reason to believe, in either Case, that it was *dishonestly* got, is liable to the same Punishment as the principal *Offender*.

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224. Whoever *dishonestly* removes, conceals, or otherwise deals with any *Property*, or, knowing that he has no right, makes claim thereto, or endeavours to commit any Deceit touching such *Property* or the Right thereto, meaning thereby to hinder that *Property* or any Part of it from being taken under

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the Sentence or Decree of a *Court of Justice*, passed or about to be passed; or to hinder the due Administration of Law, is liable to Imprisonment for Two Years, and also to Fine.

196

225. Whoever *dishonestly*, or for the Purpose of Annoyance, institutes or becomes a Party to any civil Suit, or *dishonestly* or for the Purpose of Annoyance makes any other Person a Party to any civil Suit, without reasonable or probable Cause, is liable to Imprisonment for One Year, and also to Fine; but no Person shall be prosecuted under this *Article*, unless on the Certificate of the *Judicial Officer* by whom the Suit is finally decided, that in his Opinion such *Offence* has been committed.

English Lawyers generally are opposed to this Article. The Company's Civil Servants consider it likely to be very useful. It has been thought advisable to introduce the Check of the Judge's Certificate, conformably to the Principle of Act. I. 1848. This belongs properly to Procedure.

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226. Whoever, directly or indirectly, threatens any Person with *Wrong*, for the Purpose of prevailing on *him*, or any other Person to refrain from prosecuting or defending any civil Suit, or from taking any lawful Proceeding in such Suit, or from giving Evidence in any judicial Proceeding, is liable to Imprisonment for Two Years, and also to Fine.

CHAPTER XI.

Offences relating to Perjury, Personation, and Forgery.

Most of the Offences described here as Forgeries are in Chapter XX. of the Code, "Offences relating to Documents." This appears their proper Place.

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227. Whoever, in any Proceeding or Inquiry, being *solemnly bound* to state the Truth, states that to be true which *he* knows or believes to be untrue, or which *he* does not know or believe to be true, *perjures himself* and commits *Perjury*.

393

228. Whoever *maliciously* takes on *himself* the Name or Character of another Person, or falsely and *maliciously*, without lawful Authority, takes on *himself* to act, as if with lawful Authority, in the Name or on Behalf of another Person, commits "*Personation*."

Clause 393 of the Code includes many other more venial Offences of "cheating by Personation." It appears desirable to class separately here the grave Offences of this Article; the other Cheats of Clause 393 will be introduced in their proper Place.

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229. Whoever falsely and *maliciously* makes or endeavours to make One Thing like another Thing, or falsely makes or alters any *Token* or any Part thereof, is said to *forg* that Thing or *Token*; and every *Token* which has been so falsely and *maliciously* made or altered is a *forged Token*.

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230. Whoever *maliciously* does or contrives anything, not being *Perjury*, meaning to mislead any *Officer* in any Proceeding or Inquiry carried on by *him* in discharge of *his* Office, or any Witness examined by or before *him*, is said to *forg* *Evidence*.

The Expression of the Code is "fabricate false Evidence." This is an ambiguous Phrase, having a different Meaning accordingly as the "Evidence" is considered false with respect to the guilty Knowledge of the Person who gives it, or with respect to the untrue Inference that is intended to be drawn from it. In the First Example given under Clause 189 of the Code, the only Evidence would be, that the Jewels were found in Z's Box, which would be true, though the Court might draw a false Inference from it, and in that Sense it might be called false or fallacious Evidence. If A were not to put the Jewels into Z's Box, but were to prepare a false Statement to be made by an Accomplice that they were so found, this also might be properly described as the "Fabrication of false Evidence." It would not be "Subornation of Perjury" until the Perjury should be actually committed. The Second and Third Examples of Clause 189 of the Code are clearly Forgeries in the usual Sense of the Word, as defined in Article 229.

393.

231. Every Person who commits *Perjury* or *Forgery of Evidence* in anything material to the Result of the Proceeding or Inquiry, or who commits *Personation*, is liable to Imprisonment,—which may be,

For Five Years, if the Proceeding or Inquiry is by or by Authority of a *Judicial Officer*, or preliminary to a Proceeding or Inquiry by a *Judicial Officer*;

For Two Years in every other Case; and in every Case is liable also to Fine.

232. Whoever

232. Whoever commits *Perjury, Forgery of Evidence, or Personation*, meaning or having Reason to believe that *he* may thereby cause any Person to be convicted of a *Capital Felony* is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

233. Whoever commits *Perjury, Forgery of Evidence, or Personation*, meaning or having Reason to believe that *he* may thereby cause any Person to be convicted of any *Offence*, other than a *Capital Felony*, punishable more severely than by Imprisonment for Three Years, is liable to the same Punishment as a Person convicted of that *Offence*. 192

234. Whoever commits *Perjury, Forgery of Evidence, or Personation*, meaning or having Reason to believe that *he* may thereby cause any Person to be convicted of any *Misdemeanor* punishable not more severely than by Imprisonment for Three Years, is liable to Imprisonment for Three Years, and also to Fine.

235. Whoever, in pleading in any Suit, *maliciously* makes any false Statement which *he* knows to be false, is liable to the same Punishment as if *he* were *solemnly bound* to state the Truth in *his* Pleading.

This is recommended in Note G, p. 43, though it is not introduced into the Code. Answers in Equity are now made on Oath, and there appears no sound Reason why the same Principle should not be applied to all other Pleadings.

236. Whoever *forges* the Seal of any *Court of Justice*, or the Impression of such Seal, is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

237. Whoever *forges* any *Document* relating to any Judicial Proceeding is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

238. Whoever *forges* any *valuable Document* is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine. 444

239. Whoever *forges* any *Document*, meaning or having Reason to believe that it may be *dishonestly* used as Genuine, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine. 445

240. Whoever wholly or partly *forges* any Stamp from which the Government draws a Revenue is liable to Transportation or Imprisonment for Seven Years, and also to Fine. 217

The Offences relating to forged Stamps are placed in the Code in the Chapter of Offences against the Revenue. Most of them are included in the general Articles relating to forged Tokens.

241. Whoever *forges* any *Token* is liable to Imprisonment for Three Years, and also to Fine. 443
446

242. Whoever *dishonestly* procures any Person to sign or execute any *Document*, by deceiving *him* as to the Purport of it, is liable to the same Punishment as for *forging* that *Document*.

243. Whoever puts off or uses any *forged Token*, with the same criminal Knowledge and Intent which would make the false making of it *Forgery* of that *Token*, is liable to the same Punishment as for *forging* it. 220
443
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244. Whoever knowingly has in *his* Possession, without lawful Excuse, any *forged Token*, meaning or having Reason to believe that it may be *dishonestly* used as Genuine, is liable to Imprisonment, which may be— 221
449
450

For Five Years, if the *Token* is such that the *Forgery* of it is punishable with Transportation :

For Three Years in any other Case ; and in every Case is also liable to Fine.

245. Whoever makes any Tool, Machine, or Material, meaning or having Reason to believe that it may be used for the Purpose of *forging* any *Token*, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine. 219
447

246. Whoever knowingly has in *his* Possession, without lawful Excuse, any Tool, Machine, or Material, which may be used for *forging* any *Token*, (263.) 4 E 2 meaning 218
448

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meaning or having Reason to believe that it may be used for *forging* such *Token*, is liable to Imprisonment for Three Years, and also to Fine.

233 247. Whoever *forges* any *sterling Coin* is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

The Offences relating to Coin are included in a separate Chapter of the Code,

232 248. Whoever *forges* any *current Coin* is liable to Imprisonment for Three Years, and also to Fine.

246 249. Whoever alters any *current Coin*, meaning to make it look like different
247 *current Coin*, commits the *Offence* of *forging* the Coin to which *he* endeavours to liken it.

246 250. Whoever gilds or silvers, or with any Wash or Alloy colours or cases
247 over, any Metal or Mixture of Metals of the Size and Shape of any *current Coin*, meaning or having Reason to believe that the same may be made into *forged current Coin*, commits the *Offence* of *forging* such Coin.

246 251. Whoever debases any *current Coin* by lessening, lightening, or other-
247 wise altering it, meaning or having Reason to believe that the Coin so debased may pass for genuine *current Coin*, commits the *Offence* of *forging* such Coin.

20 252. It is not necessary for Completion of the *Offence* of *forging* Coin that the *forged* Coin be so far finished as to be ready for uttering.

238 253. Whoever knowingly imports into *India* any *forged* Coin, like or meant to be like *sterling Coin*, is liable to Imprisonment for Five Years, and also to Fine.

239 254. Whoever knowingly imports into *India* any *forged* Coin, like or meant to be like *current Coin*, is liable to Imprisonment for Three Years, and also to Fine.

237 255. Whoever in *India* *abets* the *Forgery* of *sterling Coin* out of *India*, is liable to Imprisonment for Five Years, and also to Fine.

241 256. Whoever knowingly utters or puts off as *sterling Coin* any *forged* Coin
250 or Coin debased by *Forgery*, is liable to Transportation or Imprisonment for Seven Years, and also to Fine.

240 257. Whoever knowingly utters or puts off as *current Coin* any *forged* Coin,
249 or Coin debased by *Forgery*, is liable to Imprisonment for Three Years, and also to Fine.

258. Whoever knowingly utters or puts off as *current Coin* any *forged* Coin or Coin debased by *Forgery*, after having been convicted of any *Offence* made punishable in this Chapter, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

259. Whoever buys, sells, takes, or puts off, or endeavours to buy, sell, take, or put off, any debased *sterling Coin* or any *forged* Coin, like or meant to be like *sterling Coin*, at a lower Rate or Value than that for which such *sterling Coin* is issued, is liable to Imprisonment for Five Years, and also to Fine.

243 260. Whoever knowingly has in *his* Possession, without lawful Excuse, any
244 *forged current Coin*, or *current Coin* debased by *Forgery*, meaning or having
251 Reason to believe that it may pass as genuine, is liable to Imprisonment for
252 Three Years, and also to Fine.

The mere *Offence* of guilty Possession, unaccompanied by any Attempt at Utterance, seems sufficiently punished, even in the Case of *sterling Coin*, by the Punishment which the Code awards for such Possession of *forged* Coin other than *sterling*. The guilty Knowledge, at the Time of becoming possessed, is purposely omitted.

234 261. Whoever makes any Tool or Machine, meaning or having Reason to
235 believe that it may be used for enabling any Person to *forge* any *current Coin*, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

262. Whoever

262. Whoever knowingly has in *his* Possession, without lawful Excuse, any Tool, Machine, or Material meaning or having Reason to believe that it may be used for *forging any current Coin*, is liable, to Imprisonment for Three Years, and also to Fine.

237

263. Whoever knowingly and without lawful Authority takes out of any Mint established by the Queen or the East India Company any Tool or Machine used for coining *current Coin*, is liable to Imprisonment for Three Years, and also to Fine.

245

264. Whoever, being an *Officer* employed in any Mint established by the Queen or the East India Company, contrives or *abets* the Issue of any Coin from that Mint as *sterling Coin*, of any other Weight or Composition than the Weight and Composition established by Law, is liable to Imprisonment for Five Years, and also to Fine.

CHAPTER XII.

Offences against the Revenue.

208

265. Whoever *wilfully* imports or endeavours to import any *Property* into *India*, or *wilfully* exports or endeavours to export any *Property* from *India*, or *wilfully* carries or endeavours to carry any *Property* from Place to Place in *India*, in breach of any Law by which such Importation, Exportation, or carrying is forbidden or regulated, is a *Smuggler*, and commits the Offence of "*Smuggling*."

266. Whenever any Gang or Company of Three or more Persons meet or continue together for the Purpose of *Smuggling*, every *Smuggler* forming Part of such Gang commits the *Offence of Gang Smuggling*.

209

267. Every *Smuggler* is liable to a Fine of Five hundred Rupees, added to Five Times the Value of the *Property smuggled*.

210

268. Whoever *fraudulently* receives *smuggled Property*, knowing it to have been *smuggled*, is liable to Fine of Five hundred Rupees, added to Five Times the Value of the *Property smuggled*.

269. Every Person who is convicted of *Smuggling* or of *fraudulently* receiving *smuggled Property* knowing it to have been smuggled, after having been previously convicted of either *Offence herein* mentioned, is liable to Imprisonment for One Year, and also to Fine.

See Act XXIX. 1838, 17.

270. Every Person who commits the Offence of *Gang Smuggling* is liable to Imprisonment for Six *Months*, and also to Fine of Five Hundred Rupees, added to Five Times the Value of the *Property smuggled*; and, on being convicted a Second or any following Time of *Gang Smuggling*, is liable to Imprisonment for Two Years, and also to Fine.

See Act XXIX. 1838.

271. Every Person who commits the *Offence of Gang Smuggling* while armed with any Weapon, is liable to Imprisonment for Three Years, and also to Fine.

211

272. Whoever, being in charge of any *Vessel*, places that *Vessel* where *he* is forbidden to place it, or refuses, without lawful Excuse, to place it where *he* is *lawfully bound* to place it by any Law or the *binding Order* of any Revenue *Officer*, is liable to Fine.

273. Whenever the Cargo on board of any *Vessel*, on lawful Examination thereof by any Revenue *Officer*, is not found to correspond with the Manifest of the Cargo delivered according to Law, the Master of such *Vessel* is liable to Fine if there are more Goods than are set forth in the Manifest; and, if any Goods are missing which are in the Manifest, to Fine of Five hundred Rupees for each missing Package, the Absence of which is not accounted for to the Satisfaction of the Collector of Customs.

See Act VI. 1844.

212

274. Whoever cultivates, collects, or manufactures anything in breach of any Law by which the Cultivation, Collection, or Manufacture of that Thing is forbidden

228

forbidden or regulated, is liable to Imprisonment for Three *Months*, and also to Fine.

213

275. Whoever makes or knowingly has in *his* Possession, without lawful Excuse, any Tool, Machine, or Implement, meaning or having Reason to believe that it may be used for doing anything which is an *Offence* under Article 274, is liable to Imprisonment for Three *Months*, and also to Fine of Five hundred Rupees.

214

276. Whoever carries from Place to Place, sells, or offers for Sale anything in breach of any Law by which the carrying, selling, or offering for Sale of such Thing is forbidden or regulated, is liable to Imprisonment for Three *Months*, and also to Fine of Five hundred Rupees.

215

277. Whoever has in *his* Possession anything in breach of any Law by which the Possession of that Thing is forbidden or regulated, is liable to Fine of Twice the Value of that Thing.

216

278. Whoever, being *lawfully bound* to put any *Token* on anything in *his* Possession omits to put such *Token* thereon, is liable to Fine of the Value of such Article.

223

279. Whoever, meaning to cause *wrongful Loss* to any Person, effaces any Part of any stamped *Document* in order that such Stamp may be used for another *Document*, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees added to Five Times the Value of such Stamp.

There can be little Doubt that this would be a forged Document under the Definition of Article 229, but the Offence is so special, that it seems properly placed in a separate Article. The Word Person under Article 8 applies to corporate Bodies as well as Individuals, and so would include the East India Company represented by the Government.

280. Whoever, meaning to cause *wrongful Loss* to any Person, uses for any *Document* any stamped Material which *he* has Reason to believe to have been before used for another *Document*, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees added to Five Times the Value of the Stamp.

225

281. Whoever establishes or maintains any *unlawful* Post for carrying Letters or Packets from Place to Place for Hire, or receives any Letter or Packet in order to carry it by such *unlawful* Post, or carries the same by such *unlawful* Post, or delivers the same having Reason to believe that it has been carried by such *unlawful* Post, is liable to Imprisonment for Three *Months*, and also to Fine of Five hundred Rupees.

226

282. Whoever, being in charge of any Letter or Packet which is on board of any *Vessel*, and being *lawfully* bound to deliver such Letter or Packet at any Post Office or to any *Officer* of a Post Office, *wilfully* omits so to deliver it at the Time and in the Manner ordered by Law, is liable to Fine.

227

283. Whoever, being in charge of any *Vessel*, refuses to take on board of that *Vessel* any Letter or Packet which *he* is *lawfully* bound to take on board, is liable to Fine of Five hundred Rupees.

284. Whoever sends any chargeable Letter or Packet by any Post established by the Government in such Manner as to make it appear to be a Packet or Part of a Packet not chargeable with any Postage Duty, or chargeable with a lower Rate of Duty than the full Postage Duty of such Letter or Packet, is liable to Fine of Fifty Rupees.

See Acts XVII. 1837, 9, 10; XX. 1838, 5, 6, 7.

285. Whoever, being an *Officer* of any Post Office established by the Government, *fraudulently* puts any wrong *Token* on any Letter or Packet, or *fraudulently* alters or effaces any *Token* on any Letter or Packet, is liable to Imprisonment for Two Years and also to Fine.

See Act XVII. 1837, 35.

228

286. Whoever, being lawfully empowered by Licence from any *Officer* to cultivate, to collect, to manufacture, to import, export, to carry from Place to Place, to sell, or to have in *his* Possession, anything, *wilfully* disobeys any Law, or *binding Order*, or any Condition imposed by the lawful Authority of the *Officer*

Officer from whom such Licence was obtained, as to the Way in which *he* is to act as such licensed Person, is liable to Fine of Two hundred Rupees.

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287. Whoever *wilfully* evades or endeavours to evade the Payment of any Toll or Duty made payable by any Law, or does anything in breach of any Law relating to the public Revenue drawn from any Toll or Duty, not being an *Offence* under any *Article herein-before* contained, whereby *wrongful Loss* may be caused of any Toll or Duty, or any Part thereof, is liable to Fine of Ten Times the Amount of such Toll or Duty, or to Fine of Five hundred Rupees, if the Amount of such Toll or Duty cannot be ascertained; and if the *Offender* is an *Officer* of the Revenue, is also liable to Imprisonment for Two Years.

See Acts XIV. 1836, 12; XXV. 1836, 4, 22, 24; XVI. 1837, 4, 5; XVII. 1837, 1838. VI. 1844. XV. 1845.

288. The Punishments provided by this Chapter are independent of any Confiscation or increased Duties to which any *Property* is liable for Breach of any Law by any Person.

229

CHAPTER XIII.

Offences relating to the Spread of Disease, Adulteration of Food and Medicine.

Chapter XIV. of the Code is divided into Two, this and the following one.

289. Whoever *maliciously* does anything which *he* has Reason to believe to be likely to spread any Disease dangerous to Human Life, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

257

The Prohibition of Inoculation of Small Pox was considered while this Article was under Discussion, but was left undetermined, pending further Inquiries.

290. Whoever *recklessly* exposes *himself*, or any other Person, while diseased, with any infectious Disease in any Thoroughfare or public Place. is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

291. Whoever *recklessly* exposes any Poison is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

268

292. Whoever *wilfully* disobeys any Law or *binding Order* for putting any *Vessel* into Quarantine, or for regulating the Intercourse with any *Vessel* in Quarantine, or with any Place where an infectious Disease prevails, is liable to Imprisonment for Six *Months*, and also to Fine.

258

293. Whoever *wilfully* adulterates any Food or Drink, so as to make it unwholesome, meaning or having Reason to believe that it may be used as wholesome Food or Drink, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

295

294. Whoever sells or offers for Sale, or puts off as wholesome, any Food or Drink, having Reason to believe it to be unwholesome, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

260

295. Whoever *wilfully* adulterates any Drug or Medicine, so as to lessen the Efficacy or change the working of such Drug or Medicine, or to make it hurtful, meaning or having Reason to believe that such Drug or Medicine may be used as genuine, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

261

296. Whoever, having Reason to believe any Drug or Medicine to be adulterated, so as to lessen its Efficacy or change its working, or to make it hurtful, sells or offers it for Sale, or puts it off as genuine, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

262

297. Whoever *wilfully* sells or offers for Sale, or puts off any Drug or Medicine as a different Drug or Medicine, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

263

CHAPTER XIV.

Common Nuisances.

298. A "*Common Nuisance*" is whatever is to the common *Wrong* of *Her Majesty's* Subjects, or any Class of them, or anything whereby they are hindered of or disturbed in the lawful Use and Enjoyment of any common Right, or which causes or is likely to cause to them any common Harm, Disorder, or Annoyance. A *Common Nuisance* is not excused on the ground that it causes some other Convenience or Advantage.

See Article of Crimes and Punishments, pp. 125, 128.

264

299. Whoever carries on any Trade, Manufacture, or Process, whereby any bad or unwholesome Smell, Gas, Soot, Smoke, Vapour, Ash, or Dust arises, or any loud Noise is continued, to the Annoyance of Persons using any Thoroughfare or *Dwelling* in the Neighbourhood, in such Manner as to be guilty of a *Common Nuisance*, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

This Article is very much more limited than the corresponding Clause of the Code, and is still further restricted by Article 300. It and other Articles of this Chapter are purposely worded so as to leave the Question of Fact to be tried, whether there is a Nuisance or not.

See Act XXI. 1841, and Act of Crimes and Punishments, p. 126. A *Dwelling* is defined in Chapter XVI.

300. No Person is to be deemed guilty of a *Common Nuisance* under Article 299, where the Trade, Manufacture, or Process has been carried on in the same Place and in the same Manner, without material Increase of Annoyance to the Neighbourhood, during at least Three Years, or where the Thoroughfare has been made, or the *Dwellings* of all those appearing to be annoyed have been built, since any Time when the same Trade, Manufacture, or Process was carried on in the same Place and in the same Manner.

The Time of Limitation proposed in the Act of Crimes and Punishments is Twenty Years.

270

301. Whoever makes more than Forty *Tolaks* of Gunpowder or other explosive Substance at One Time, in any Building within Three hundred Yards of any *Dwelling* or of any public Thoroughfare, or in any *Dwelling*, is guilty of a *Common Nuisance*, and is liable to Imprisonment for One Year, and also to Fine.

The general Offence of causing Danger to Life by any Means, in such Manner that if Death were to follow it would be Murder or Manslaughter, is provided for in the next Chapter.

270

302. Whoever keeps more than Ten *Seers* of Gunpowder or other explosive Substance at One Time, not being Ammunition belonging to the *Queen* or the East India Company, in any Building within Three hundred Yards of any *Dwelling* or of a public Thoroughfare, or in any *Dwelling*, or in a *Vessel* in any Part of a River, Harbour, or Roadstead, whither *Vessels* are forbidden by Law to come without discharging their Gunpowder, is guilty of a *Common Nuisance*, and is liable to Imprisonment for One Year, and also to Fine.

303. Whoever, in any Building within Three hundred Yards of any *Dwelling* or of a public Thoroughfare, or in any *Dwelling*, keeps more than One *Seer* of Gunpowder or other explosive Substance, not being Ammunition belonging to the *Queen* or the East India Company, in One Canister or Package, or in any Two or more Canisters or Packages, containing altogether more than One *Seer*, nearer than Ten Feet one from another, is guilty of a *Common Nuisance*, and liable to Imprisonment for One Year, and also to Fine.

270

304. Whoever, *wilfully* and without lawful Excuse, disobeys any Law or *binding Order* concerning the Manufacture, Care, or Sale of Gunpowder or other explosive Substance, is guilty of a *Common Nuisance*, and is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

305. Whoever builds or repairs any House or other Building in any Manner forbidden by any Law or *binding Order* for regulating Buildings, is guilty of a *Common Nuisance*, and is liable to Fine of Five hundred Rupees.

See Acts XII. 1837; XXVIII. 1839.

272

306. Whoever, having a Right to pull down or repair any Building, allows it to be in a ruinous or dangerous State, or allows it to fall, so as to be guilty of

of a *Common Nuisance*, is liable to Impprisonment for Six *Months*, and also to Fine.

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307. Whoever *unlawfully* destroys, defaces, injures, or removes any Light-house, Seamark, or Mark used for navigating any River, or any Buoy, is guilty of a *Common Nuisance*, and is liable to Imprisonment for Three Years, and also to Fine.

308. Whoever, without lawful Excuse, hinders or obstructs the Passage along any public Thoroughfare, or any navigable River or Canal, is guilty of a *Common Nuisance*, and is liable to Fine.

407
408

309. Whoever, in breach of any Law or *binding Order*, throws Ballast or Rubbish into any Harbour, Roadstead, or Anchorage, is guilty of a *Common Nuisance*, and is liable to Fine.

310. Whoever *maliciously* diverts the Course of any Stream of Water, or lessens the Supply of Water to it, in such Manner as to be guilty of a *Common Nuisance*, is liable to Imprisonment for Two Years, and also to Fine.

407

311. Whoever *maliciously* defiles the Water of any public Well, Spring, or Tank, so as to be guilty of a *Common Nuisance*, is liable to Imprisonment for One *Month*, and also to Fine of Two hundred Rupees.

407

312. Whoever, being the Owner of any Tank or Well near any public Thoroughfare, leaves such Tank or Well unfenced, or not safely fenced, so as to be *Common Nuisance*, is liable to Fine of Two hundred Rupees.

See Act XXI. 1841.

313. Whoever digs any Pit and leaves it unfilled or undrained, so as to be a *Common Nuisance*, is liable to Fine.

314. Whoever keeps for Hire without Licence any *Carriage* or other Thing required by Law to be licensed, or *wilfully* disobeys or neglects any Condition on which *his* Licence for keeping such *Carriage* or other Thing is granted to *him*, is guilty of a *Common Nuisance*, and is liable to a Fine of Fifty Rupees.

315. Whoever navigates any *Vessel heedlessly*, or otherwise than according to any Law or *binding Order* for regulating the Management of such a *Vessel*, is liable to Imprisonment for Six *Months*, and also to Fine.

266
267

See Note to Article 301.

316. Whoever drives any *Carriage* or Animal, or rides, in any public Thoroughfare or public Place, furiously, *heedlessly*, and wantonly, is liable to Imprisonment for One *Month*, and also to Fine of Two hundred Rupees.

265

317. Whoever *heedlessly* lets loose, or allows to be out of *his* Control, in any public Thoroughfare or public Place, any wild or dangerous Animal belonging to *him*, or of which *he* had charge, is guilty of a *Common Nuisance*, and is liable to Imprisonment for One *Month*, and also to Fine of Two hundred Rupees.

273

318. Whoever keeps or draws any Lottery, or knowingly allows any Lottery to be drawn in *his* House, or contrives or publishes any Scheme for a Lottery, is guilty of a *Common Nuisance*, and is liable to Imprisonment for Six *Months*, and also to Fine.

319. Whoever agrees to pay any Sum of Money, or to deliver any *Property*, or to do or forbear to do anything for the Benefit of any Person on the happening of any Event depending on or connected with the Drawing of any Lot, Ticket, Number, or Figure, or any other Chance, in any Way other than by the lawful Insurance of Life or *Property*, is deemed to keep a Lottery within the Meaning of Article 318.

320. Whoever keeps a Press for printing Books or Papers, otherwise than according to any Law or *binding Order* for regulating the Possession of Printing Presses, is guilty of a *Common Nuisance*, and is liable to Imprisonment for Two Years, and also to Fine.

291

This and the next Two Articles form Chapter XVII. of the Code.

321. Whoever prints or publishes any Book or Paper otherwise than according to any Law or *binding Order* for regulating the printing and publishing of
(263.)

292

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Books and Papers, is guilty of a *Common Nuisance*, and is liable to Imprisonment for Two Years, and also to Fine.

293

322. Whoever prints or publishes any periodical Book or Paper containing public News, or Remarks on public News, otherwise than according to any Law or *binding Order* for regulating the printing and publishing of such Books and Papers, is guilty of a *Common Nuisance*, and is liable to Imprisonment for Two Years, and also to Fine.

323. Whoever prints, publishes, or openly exhibits anything representing or having any lewd, obscene, or immoral Signification, is guilty of a *Common Nuisance*, and is liable to Imprisonment for One Year, and also to Fine.

324. Whoever sells or endeavours to sell or put off anything representing or having any lewd, obscene, or immoral Signification, is guilty of a *Common Nuisance*, and is liable to Imprisonment for Six Months, and also to Fine of Five hundred Rupees.

486

325. Whoever in any public Thoroughfare or public Place, or within view thereof, is guilty of any Lewdness or Obscenity, or exposes *his* Person indecently, is guilty of a *Common Nuisance*, and is liable to Imprisonment for One Month, and also to Fine.

326. Whoever is guilty of any other *Common Nuisance* is liable to Imprisonment for One Month, and also to Fine of Fifty Rupees.

327. Whenever a *Common Nuisance* is continuous, the Court may adjudge the Offender to pay such Fine, not exceeding One-tenth Part of the Fine first adjudged, as in its Discretion seems fit, for each Day during which the *Common Nuisance* is continued after Conviction of the Offender.

CHAPTER XV.

Offences against the Body.

DIVISION I.

Murder, Manslaughter, and Attempts to murder.

294

328. Whoever *maliciously* kills any other Person commits *Murder*.

295

329. Whoever *wilfully* kills *himself*, or gives *free Consent* to *his* own Death, by the *unlawful Act* of another Person, commits *Self-murder*.

298

306

330. Whoever *maliciously* abets another Person in committing *Self-murder*, or in doing anything which the *Abettor* knows to be likely to cause Death, and thereby causes the Death of such other Person, commits *Murder*.

304

331. Whoever, otherwise than *maliciously* or by *Mischance*, kills any other Person, being neither a *Convict* lawfully put to death in execution of a lawful Sentence, nor a Person lawfully killed in War, or in the Exercise of the Right of Defence, commits *Manslaughter*.

298

302

307

332. In any Case of *Murder* or *Manslaughter* the *free Consent* of the Person killed does not change the *Offence*.

297

333. It is *Manslaughter*, and not *Murder*, when the Death is caused in sudden Fear or Anger, caused by great and *unlawful* Provocation, unless the Offender either sought or *wilfully* provoked the Circumstances causing the Fear or Anger as an Excuse for killing or doing *Hurt*, or *assaulted* the Person killed before the Circumstances which caused the Fear or Anger.

Assault is defined in Division v. of this Chapter.

334. In every such Case the Court by which the *Culprit* is tried shall determine whether the Provocation was great enough, and the Passion of Fear or Anger great and sudden enough, to take from the *Offence* the Character of *Murder*.

296.

335. In the Case provided for in Article 333 it is *Manslaughter*, and not *Murder*, though the Offender happens to kill another Person whom *he* did not mean to *hurt*, with or instead of the Person who caused the Fear or Anger.

336. Whoever

336. Whoever commits Murder is liable to suffer Death. See Article 100.	No. of ti Penal Co 300
337. Whoever commits <i>Manslaughter</i> is liable to Transportation or Imprisonment for Fourteen Years, and also to <i>Fine</i> , unless the <i>Manslaughter</i> is <i>extenuated</i> or <i>justified</i> as <i>herein-after</i> provided.	301
338. <i>Manslaughter</i> is <i>extenuated</i> , where a Person is in the lawful Exercise of the Right of Defence, in such wise that he has not the Right of causing Death to the <i>Offender</i> , but meaning to use no more Force than <i>he</i> had reasonable Ground to think necessary for such Defence, kills the <i>Offender</i> .	299 303
This Offence is punishable in the Code by Fourteen Years Imprisonment. But the Code carries the Right of killing in defence further than is now proposed. Compare Article 86 with Clauses 76, 79 of the Code.	
339. <i>Manslaughter</i> is <i>extenuated</i> , where an <i>Intruder</i> in any House or Land resists being forcibly put out, and thereupon the Person entitled to the lawful Possession thereof, meaning to use no more Force than <i>he</i> has reasonable Ground to think necessary for the Purpose, kills the <i>Intruder</i> .	298 303
See Note on the last Article. Intrusion is defined in the Chapter of Offences against Property to mean the unlawful Entry into a House or Land. It includes "House Trespass," and some other "Criminal Trespasses" of the Code.	
340. <i>Manslaughter</i> is <i>extenuated</i> , when a Person defending <i>himself</i> against One Person commits <i>Manslaughter</i> by killing another Person, if it would have been <i>extenuated</i> had the Person killed been the Person against whom the <i>Manslayer</i> was defending <i>himself</i> .	296
341. Whoever commits <i>extenuated Manslaughter</i> is liable to Imprisonment for One Year, and also to <i>Fine</i> .	302 303
342. <i>Manslaughter</i> is <i>justified</i> , when committed by an <i>Officer</i> or other Person who, having lawful Authority to arrest or keep in Custody any Person for any <i>Capital Offence</i> , or Suspicion of any <i>Capital Offence</i> committed by <i>him</i> , and using lawful Means for the Purpose, cannot otherwise than by killing the <i>Culprit</i> hinder <i>his</i> Escape.	
Justifiable Manslaughter is not mentioned in the Code. Clauses 62 and 63 would hardly save the Acts mentioned in this and the next Two Articles from being Murder; for they are within none of the Exceptions of Clauses 295.	
343. <i>Manslaughter</i> is <i>justified</i> , when committed by an <i>Officer</i> while lawfully acting in the Execution of any lawful Writ, Warrant, or other Process for Behoof of the Law, or by an <i>Officer</i> or other Person while hindering or putting down, or endeavouring to hinder or put down, a <i>Felony</i> , <i>Riot</i> , or <i>Brawl</i> , if, in either Case, <i>he</i> is <i>unlawfully</i> and forcibly resisted, and, using no more Force than there is reasonable Ground to think necessary to overcome such Resistance, kills the Person so resisting; or, in either Case, being under reasonable Fear of Death, because of the Force opposed to <i>him</i> , if <i>he</i> does <i>his</i> Duty, and because <i>he</i> cannot otherwise do <i>his</i> Duty and save <i>his</i> Life, kills the Person so resisting.	
344. <i>Manslaughter</i> is <i>justified</i> , when committed by any <i>Officer</i> or other Person while going to execute any lawful Authority, or while returning after having executed it, or having been <i>unlawfully</i> hindered from executing it, if it would have been <i>justified</i> had <i>he</i> been in the actual Execution of it.	
345. It is not <i>justified Manslaughter</i> if a Person is killed while resisting the Execution of a Writ, Warrant, or other Process for Behoof of the Law, unless <i>he</i> had Warning thereof, and that the Act resisted was about to be done by its Authority; but such Warning need not be given by showing the Writ, Warrant, or Process, or in express Terms, if it be given in fact by the Behaviour of the Parties or otherwise.	
346. Whoever, meaning to commit <i>Murder</i> , does all that <i>he</i> has reason to believe necessary for the Purpose, in such Manner that <i>he</i> would have committed <i>Murder</i> if Death had been caused thereby, is liable to Transportation or Imprisonment for Life, and in either Case also to <i>Fine</i> .	308
347. Whoever, meaning to commit <i>Murder</i> , <i>maliciously</i> causes any <i>Hurt</i> to any Person, is liable to Transportation or Imprisonment for Life, and in either Case also to <i>Fine</i> .	320

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348. Whoever, while *rioting*, commits either of the *Offences* specified in Articles 346 and 347, is liable to suffer Death.

310 349. Whoever belongs, or has at any Time belonged, to any Gang of Persons associated for the Purpose of practising Murder, or any *unlawful* Act accompanied with Murder, is called a "*Thug*."

311 350. Every *Thug* is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

312 351. Every Woman who, being with Child, *wilfully* causes herself to miscarry, and every Person who *wilfully*, with the *free Consent* of a Woman with Child, causes her to miscarry, unless in either Case for the Purpose of saving her Life, is liable to Imprisonment for Three Years, and also to Fine.

313 352. Every Person who *wilfully*, without the *free Consent* of a Woman with Child, causes her to miscarry, unless for the Purpose of saving her Life, and while she is unable to *consent freely*, is liable to Transportation or Imprisonment for Seven Years, and also in either Case to Fine.

353. There cannot be *Murder* or *Manslaughter* of a Child in the Womb unless it is born alive after a *Hurt* received by it in the Womb, which *Hurt* causes its Death after being born alive.

See Act of Crimes and Punishments, p. 140.

DIVISION II.

Rape, Adultery, &c.

354. A *Man* commits *Rape*, who has carnal Knowledge of a *Woman* who is not then his Wife :—

First.—Against her Will.

Secondly.—Without her Consent, while she is insensible or incapable of giving her Consent.

Thirdly.—With her Consent, when her Consent has been extorted by putting her in Fear of Death, *Maim*, or *grievous Hurt*.

Fourthly.—With her Consent, when the *Man* has Reason to believe that her Consent has been given because she believes him to be another *Man*, to whom she is or believes herself to be married.

Fifthly.—With or without her Consent, when she is under Ten Years of Age.

The Limitation of Age proposed by the Code is Nine Years. The Age according to English Law is Ten ; altered for the Supreme Courts of India, by 9 Geo. 4, Cap. 74, to Eight, on a mistaken Idea of the Precocity of Girls in tropical Climates. On this Subject see Professor Webb's *Pathologia Indica*, p. 260.

355. The *Offence* is *Rape*, though the *Woman* consented before any carnal Knowledge had, if she is afterwards forced against her Will.

356. No *Woman* shall be deemed the Wife of any *Man* within the Meaning of Article 354, if the Marriage has been procured by Force or Deceit, and is declared by a *Court* of competent Jurisdiction to have been null and void from the Beginning.

360 357. Whoever commits *Rape* is liable to Transportation or Imprisonment for Life, and in either Case to Fine.

358. Whoever commits *Rape*, while *rioting*, is liable to suffer Death.

Rape in England is punishable since 4 & 5 Vict. Cap. 56. by Transportation for Life. Under 9 Geo. 4, Cap. 74. it is still a Capital Offence within the Jurisdiction of the Supreme Courts in India. The usual Sentence in the Company's Courts in Bengal is Seven Years Imprisonment.

359. Whoever has carnal Knowledge of a Girl under Twelve Years of Age is liable to Imprisonment for Three Years, and also to Fine.

The Age in England is Twelve ; altered by 9 Geo. 4, Cap. 74, to Ten. See Note to Article 354.

360. A *Man* who commits Adultery, by having carnal Knowledge of the Wife of another *Man*, knowing or having Reason to believe that she is another *Man's* Wife, is liable to Imprisonment for Three Years, and also to Fine.

Adultery is criminal by the Mahometan Law, which is adopted by Regulation XVII. 1817, of the Bengal Code ; it is there made punishable with Seven Years Imprisonment.

361. A married

361. A married *Woman* who commits Adultery, by knowingly allowing any *Man* other than her Husband to have carnal Knowledge of her, is liable to Imprisonment for Two Years.

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362. Whoever has carnal Knowledge of any unmarried Virgin under the Age of Eighteen Years, while she is under the Care of her Parent or Guardian, or of any Person lawfully appointed by her Parent or Guardian to have the Care of her, or after taking or seducing her from such Care, is liable to Imprisonment for Three Years, and also to Fine.

363. Whoever takes or seduces any unmarried Virgin under the Age of Eighteen Years from the Care of her Parent or Guardian, or of any Person lawfully appointed by her Parent or Guardian to have the Care of her, or any married *Woman* from the Care of her Husband, or any Person in whose Care she is with the Consent of her Husband, for the Purpose, in either Case, of having or causing any other Person to have carnal Knowledge of her, is liable,—

If she is taken by Force, to Transportation or Imprisonment for Seven Years :

If she is seduced, or taken otherwise than by Force, to Imprisonment for Two Years ; and in either Case also to Fine.

364. A *Man* who, knowing that a *Woman* is not his lawful Wife, has carnal Knowledge of her with her Consent, procured by falsely causing her to believe that she is his lawful Wife, is liable to Transportation or Imprisonment for Fourteen Years, and in either Case also to Fine.

466

365. Whoever with any *dishonest* Intention goes through any Ceremony of lawful Marriage, knowing that *he* is not thereby lawfully married, is liable to Imprisonment for Three Years, and also to Fine.

468

366. Whoever is guilty of Buggery with Mankind or any Animal is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

367. Carnal Knowledge is completed by Penetration of the Body.

359

DIVISION III.

Kidnapping.

368. Whoever by Force or Fraud *maliciously* takes or decoys any Person out of *India*, or any Child under Fourteen Years of Age out of the lawful Custody of the Parent or Guardian of such Child, commits the Offence of *Kidnapping*.

354

369. Whoever *kidnaps* any Person is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

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370. Whoever *kidnaps* any Person, meaning or having Reason to believe it likely that any *Felony* will in consequence thereof be committed with respect to such Person, is liable to be punished in the same Manner as an *Abettor* of such *Felony*, whether or not such *Felony* is committed.

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371. Whoever by Force or Fraud *unlawfully* takes or decoys any Person on board of any *Vessel*, with Intent to *kidnap him*, is liable to Imprisonment for Three Years, and also to Fine.

372. Whoever, having charge of any *Vessel*, knowingly receives on board thereof without a *binding Order*, Permit, or Ticket, for the Purpose of being carried out of *India*, any Person who cannot lawfully embark on board of such *Vessel* for such Purpose without such Order, Permit, or Ticket, is liable to Imprisonment for Six *Months* and also to Fine.

358

DIVISION IV.

Danger to Life, Maims, and other Hurts.

373. Whoever *maliciously* sets Fire to a *Dwelling*, any Person being therein, is liable to suffer Death.

374. Whoever *maliciously* sets Fire to, casts away, or otherwise destroys, any *Vessel*, whereby the Life of any Person is endangered, is liable to suffer Death

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375. Whoever

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375. Whoever *maliciously* shows any false Light or Signal, knowing or having Reason to believe that *he* will thereby endanger the Safety of any *Vessel*, or *maliciously* does anything tending to the immediate Loss or Destruction of any *Vessel* in Distress, is liable to suffer Death.

308

376. Whoever *maliciously* endangers the Life of any other Person in such wise that it would be *Murder* if Death were thereby caused, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

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377. Whoever *recklessly* endangers the Life of any other Person in such wise that it would be *Manslaughter* if Death were thereby caused, is liable to Imprisonment for Two Years, and also to Fine.

The Clauses of the Code quoted in the Margin specify certain reckless Acts as punishable absolutely. The right Principle seems to be to punish such Acts only when done in such Manner that any Harm actually following from them would be punishable.

322

378. Whoever, with Intent to commit any *Felony*, or for any Purpose of Compulsion, *maliciously* maims or causes any *grievous Hurt* to any other Person, is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

379. Whoever, while *rioting*, commits the *Offence* specified in *Article* 387, is liable to suffer Death.

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380. Whoever *maliciously* maims or causes any *grievous Hurt* to any other Person is liable to Transportation or Imprisonment for Fourteen Years, and in either Case also to Fine.

327

381. Whoever *heedlessly* maims or causes any *grievous Hurt* to any other Person, unless it is *extenuated* under *Article* 382, or *justified* under *Article* 391, is liable to Imprisonment for One Year, and also to Fine.

326

382. *Maims* and *grievous Hurts* are *extenuated* when caused in such wise that if Death were thereby caused the *Offence* would be *extenuated Manslaughter*.

383. Whoever causes a *Maim* or *grievous Hurt* which is *extenuated* under *Article* 382, and not *justified* under *Article* 391, is liable to Imprisonment for Six Months, and also to Fine of Five hundred Rupees.

329

384. Whoever, meaning to *maim* or do *grievous Hurt* to any other Person, does all that *he* has Reason to believe necessary for the Purpose, in such wise that *he* would be liable to *Transportation* or *Imprisonment* for Life or for Fourteen Years if a *Maim* or *grievous Hurt* were thereby caused, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

329

385. Whoever causes any *Hurt* to any other Person in endeavouring *maliciously* to *maim* or cause any *grievous Hurt* to *him*, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

321

386. Whoever, with Intent to commit any *Felony*, or for any Purpose of Compulsion, *maliciously* causes any *Hurt* to any other Person, is liable to Transportation or Imprisonment for Fourteen Years, and in either Case also to Fine.

323

387. Whoever *maliciously* causes any *Hurt* to any other Person by the Edge or Point of any sharp Weapon, or by Fire, or any heated Substance, or by any corrosive, explosive, or poisonous Substance, or by any Animal, is liable to Imprisonment for Three Years, and also to Fine.

318

388. Whoever *maliciously* causes any *Hurt* to any other Person is liable to Imprisonment for One Year, and also to Fine.

389. Whoever *maliciously* causes any Person to take or inhale any Drug or Vapour, with Intent to *hurt him*, or to commit or abet the Commission of any *Offence*, is liable to Imprisonment for Three Years, and also to Fine.

See Act XXIX. 1850.

390. Whoever *wilfully* maims or does any other *Hurt* to *himself* or any other Person, in order that the Person so *maimed* or *hurt* may avoid Performance of any public Duty, or in order that such Person may more readily get Alms, is liable to Imprisonment for One Year, and also to Fine.

This is an Offence by the Common Law of England. It is termed *Malongining*, corrupted into *Malingering*.

391. Whoever

391. Whoever causes any Kind of *Hurt* in such wise that if Death were thereby caused it would be *justified Manslaughter*, is not liable to any Punishment. No. of Penal Co

DIVISION V.

Assaults.

392. Whoever *wilfully* touches or meddles with, or endeavours to touch or meddle with, the Person of another, directly or indirectly, without *his* Consent, with Intent and having at the Time Ability to cause to *him* any *Hurt*, or bodily to annoy *him*, is said to *assault him*. 339 340

393. Whoever, having at the Time Ability to *assault* any Person, *wilfully* behaves *himself* so as to give to *him* or any other Person Reason to believe that *he* is about to commit an *Assault*, is said to make *Show of Assault*. 341

394. Words alone do not make an *Assault* or *Show of Assault*, but Words spoken by any Person may give such a Meaning to anything done by *him*, as to make it a *Show of Assault*. 341

395. Whoever *maliciously* hinders any Person from going whither *he* will and lawfully may go, is said to *restrain him wrongfully*. 330

396. Whoever *wrongfully restrains* any Person in an enclosed or private Place is said to *imprison him wrongfully*. 331

397. Whoever *wrongfully restrains* any Person is liable to Imprisonment for Three *Months*, and also to Fine. 332

398. Whoever *wrongfully imprisons* any Person is liable to Imprisonment for One Year, and also to Fine. 333

399. Whoever *wrongfully imprisons* any Person for more than Twenty-four Hours is liable to Imprisonment for Two Years, in addition to One *Month* for every Day on which such *wrongful* Imprisonment was continued after the First Twenty-four Hours, and also to Fine. 334 335 336

400. Whoever *wrongfully imprisons* any Person, with intent to commit any *Felony*, or for any Purpose of Compulsion, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine. 337

401. Whoever *maliciously* causes any *Hurt* to any Person, while that Person is *wrongfully imprisoned*, either by any *wilful* Act, or by neglecting to furnish anything which *he* has Reason to believe necessary to keep the Person imprisoned from being in Danger of Death or *Hurt*, is liable to Transportation or Imprisonment for Fourteen Years, and also to Fine. 338

402. Whoever *assaults* any Person, unless the *Offence* is *extenuated* under *Article 403*, or *justified* under *Article 420*, is liable to Imprisonment for Three *Months*, and also to Fine. 342 348

403. *Assaults* are *extenuated*, when made in such wise that if Death were thereby caused, the *Offence* would be *Manslaughter*. 351

404. Whoever is guilty of *extenuated Assault* is liable to Imprisonment for One *Month*, and also to Fine of Fifty Rupees. 351

405. Whoever *assaults* any Person, with intent *wrongfully to imprison him*, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees. 350

406. Any *Man* who *assaults* any *Woman* is liable to Imprisonment for Six *Months*, and also to Fine. 351

407. Whoever *assaults* any *Woman* indecently is liable to Imprisonment for One Year, and also to Fine. 347

408. Whoever *assaults* any *Officer*, while in discharge of *his* Duty as such *Officer*, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

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409. Whoever *assaults* any Person in a *Court of Justice* is liable to Imprisonment for One Year, and also to Fine.

410. Whoever *assaults* any *Officer of Justice* is liable to Imprisonment for Two Years, and also to Fine.

411. Whoever *assaults* any *Judicial Officer* is liable to Imprisonment for Two Years, and also to Fine.

412. Whoever *assaults* any *Judicial Officer* in a *Court of Justice* is liable to Imprisonment for Three Years, and also to Fine.

413. Every *Convict* who *assaults his* Gaoler, or other Person having lawful Charge of *him*, is liable to have the Term of *his* Sentence, either of Transportation or Imprisonment, lengthened by Two Years; or if imprisoned only for Nonpayment of a Fine, is liable to Imprisonment for Two Years besides the Imprisonment to which he is liable for Nonpayment of such Fine: and, if a *Man*, is also liable to Whipping.

345 414. Whoever *assaults* any Person, with Intent to commit any *Felony*, is
349 liable to Imprisonment for Two Years, and also to Fine.

344 415. Whoever, with Intent to *kidnap*, *assaults* any Person, is liable to Imprisonment for Three Years, and also to Fine.

346 416. Whoever *assaults* any *Woman*, with Intent to commit *Rape*, is liable to Imprisonment for Three Years, and also to Fine.

417. Whoever *assaults* any Person, with Intent to commit Buggery, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

343 418. Whoever *assaults* any Person, with Intent to commit *Murder*, is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

352 419. Whoever makes *Show of assaulting* any Person, unless in such wise that an *Assault* would be *extenuated* under *Article 403*, or justified under *Article 420*, is liable to Imprisonment for One *Month*, and also to Fine of Two hundred Rupees.

420. Whoever *assaults* any Person in such wise that if Death were thereby caused it would be *justified Manslaughter*, is not liable to any Punishment.

CHAPTER XVI.

Offences against Property.

363 421. Whoever moves any *Property*, which is not lawfully in *his* Possession,
375 and does not either wholly or in part belong to *him*, without the *free Consent*,
383 expressed or implied, of the Owner, or of any Person having lawful Authority to allow the Act, and with Intent *dishonestly* to appropriate it permanently to the Use of *himself* or of any other Person,

If by using Violence or causing Fear to any Person, commits *Robbery* ;
If the Act is done *fraudulently*, commits *Theft* or *steals*.

The Code distinguishes between "Theft" and "Criminal Misappropriation of Property not in Possession," punishing the former with Three Years rigorous Imprisonment, the latter with Two Years Imprisonment of either Kind. There seems no practical Advantage, but rather the contrary, in the Distinction. On this see Sir L. Peel's Observations, p. 26, on which the Definition in the Text is mainly founded. The Distinction usually made between Things attached to the Earth, however slightly, and Things severed from the Realty, has led to much mischievous Quibbling, and is abandoned here. It is also made essential to the Offences of Theft and Robbery that there should be an Intention of permanently appropriating the Property taken, in which respect also this Article differs from the Code, following the English Law. The Code treats Theft and Extortion as the main Divisions of Criminal taking, and defines some Thefts as Robberies. It is believed that the Division adopted here corresponds better to popular as well as legal Usage, according to which Theft is distinguished from Robbery by the Absence of Violence.

422. Whoever *fraudulently* moves or deals with any *Property* which is lawfully in *his* Possession, but does not either wholly or in part belong to *him*,
with

with Intent *dishonestly* to appropriate it permanently to the Use of *himself* or of any other Person, and also whoever *dishonestly* moves or deals with any *Property* which does partly but not wholly belong to *him*, with Intent to cause *wrongful Loss* to any other Person to whom it in part belongs, commits *Embezzlement*.

423. Whoever, being possessed, or having the Receipt, Care, or Control of any Money, or Goods, or *valuable Document*, being a Security for the Payment of Money or Delivery of Goods, in trust for any other Person, *dishonestly uses* or disposes thereof, or of any Part thereof, for any Purpose other than a Purpose, to which it is applicable under the Trust reposed in *him*, commits *Breach of Trust*.

See Act XIII. 1850.

424. Whoever *dishonestly* prevails on any Person to take or give up the Possession of any *Property*, or to consent that any other Person shall have or give up the Possession of any *Property*, or to make, destroy, or alter any *Document* being or purporting to be a *valuable Document*,

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If the Effect is caused by putting any Person in Fear of *Wrong* to *himself* or any other Person; commits *Extortion* ;

If by any false Pretence or Contrivance, without putting any Person in Fear of *Wrong*, commits *Cheating*.

425. *Theft, Robbery, Extortion, Embezzlement, Cheating, and Breach of Trust* may be committed, though the Owner or rightful Possessor of the *Property* is unknown.

See Note to Art. 421.

426. Whoever belongs, or has at any Time belonged, to any Gang of Persons associated for the Purpose of practising *Robbery or Extortion*, is called a *Dacoit*, and is guilty of *Dacoity*.

376

The Definition of the Code confines the Meaning of *Dacoity* to the Association of Six or more Persons for committing *Robbery*. See Acts XXIV. 1813, III. 1848, XI. 1848, and also Regulations LIV. 1803 (Bengal), XV. 1803 (Madras), according to which *Robbery by One armed Man* is *Dacoity*. This does not correspond with the Idea now generally entertained of this Offence. *Robbery by One armed Man* is treated as a separate Offence by the Code, Clause 367, and by this Act, Art. 455.

427. A *Dwelling* means any House or other Building, Hut, Tent, or *Vessel*, which either is used, or has been and is intended to be again used, by the Owner or lawful Occupier thereof, or any Person duly authorized by such Owner or Occupier, for a Human Being to lodge or dwell in the *Night* therein, either continuously or occasionally.

This Definition is taken nearly from the Act of Crimes and Punishments, with the Omission of the Words "fixed and permanent," which would take out of the Definition a great Proportion of native Huts. The next Two Articles are also taken from that Act. The Code has no Definition of a *Dwelling*.

428. All the Parts of any such House, Building, Hut, Tent, or *Vessel*, between which there are the Means of Passage by a covered and enclosed Way, are Parts of the same *Dwelling*, but any Part which has a separate Entrance from the Outside, and which is so severed from the other Parts that there are not the Means of internal Passage between them, though under the same Roof, or otherwise connected, is not a Part of the same *Dwelling*.

429. No Building, though within the same Curtilage with a *Dwelling*, and occupied therewith, is Part of the *Dwelling*, unless there is a closed and covered Passage between them.

430. Whoever enters or stays in any Place without the *free Consent*, expressed or implied, of the Owner or lawful Occupier thereof, or of some Person having Authority to allow such Entry or Stay, is an *Intruder*, and commits *Intrusion*.

118

The Word "*Trespass*" used in the Code has been purposely changed, because it is believed that almost all the *Trespases* which it is advisable to treat criminally are local *Trespases*. It seems needlessly harsh to make any one liable to a Month's Imprisonment for reading a Book without the Owner's Consent (which is the third Example added to Clause 418), though it be done to annoy the Owner.

The Word "*Intrusion*," adopted for the Purpose of distinguishing local *Trespass*, has a technical Sense in English Law, meaning an unlawful Entry into Land void by the Death of Tenant for Life or Years; but it is so nearly obsolete in this Sense that it is believed no Confusion can arise from its new Use here.

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420

431. It is enough to constitute *Intrusion* that any Part of the Body be within the Boundary of the Place *unlawfully* entered or staid in.

420

432. A Person who does not enter by *Intrusion* may become an *Intruder* by *unlawful* Stay.

419

433. Whoever commits *Intrusion*, with Intent to commit any *Offence*, or to annoy, insult, or put in fear the Owner of such Place, or any Person lawfully occupying it, or any Part of it, commits *Criminal Intrusion*.

Although *Intrusion* with Intent to insult is made criminal, following the Penal Code, the Punishment for this Kind of Offence is made very slight. See Art. 465. The Punishment provided by the Code is One Year's Imprisonment, Clause 426. In most Cases, the proper Remedy would be by Civil Action.

421

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434. Whoever, by any of the Ways *herein* set forth, commits *Intrusion* in any *Dwelling* or Building used as a Place for Worship, commits *Housebreaking*; that is to say,

First.—By means of any Force used to open, break, or displace any Part of the Walls, Partitions, Roofs, Ceilings, or Floors of the *Dwelling* or other Building, or any Door, Window, or other Hindrance to a free Entrance into the *Dwelling* or other Building, or any inner Part of it.

Secondly.—By using Violence to any Person or *Property*, or by putting any Person in fear of *Hurt*.

Thirdly.—By any Passage not meant for Human Entrance.

Fourthly.—By any Passage meant for Human Entrance, which the *Offender*, or some *Abettor* of the *Offence*, has opened or procured to be opened, in order that an *unlawful* Entrance may be thereby made.

Fifthly.—By any Contrivance or false Pretence *maliciously* used for gaining Entrance.

Sixthly.—By using Means to conceal the *Intrusion* from any Person who has a Right to hinder the *Intruder's* Entrance or Stay.

This last Case is described in the Code as a separate Offence, by the Name of "Lurking House Trespass," but in the Penal Clauses it is invariably united with Housebreaking.

399

435. Whoever *maliciously* destroys or lessens the Value of any *Property*, knowing or having Reason to believe that *he* will thereby cause *wrongful Loss* to any Person, commits *Mischief*, and is said to do the Act *mischievously*. A Person may commit *Mischief* on *his* own *Property*.

DIVISION I.

Cheating, Theft, Embezzlement, and Breach of Trust.

394

396

436. Whoever is guilty of *cheating* is liable to Imprisonment for One Year, and also to Fine.

The most heinous Case of "Cheating by Personation" are provided against in Arts. 231, 232, and 233. There appears no valid Reason for distinguishing common Cheats by Personation from other Cheats.

253

254

437. Whoever, in dealing, *dishonestly* uses any false Balance, Weight, or Measure, or *dishonestly* uses any Weight or Measure as a different Weight or Measure, is liable to Imprisonment for One Year, and also to Fine.

This and the following Two Articles form Chapter XIII. of the Code.

255

438. Whoever has in *his* Possession any false Balance, Weight, or Measure, meaning or having Reason to believe it to be likely that it may be used in dealing *dishonestly*, is liable to Imprisonment for One Year, and also to Fine.

256

439. Whoever makes, sells, or offers for Sale any false Balance, Weight, or Measure, meaning or having Reason to believe that it may be used *dishonestly* in dealing, is liable to Imprisonment for Two Years, and also to Fine.

395

440. Whoever is guilty of *cheating*, knowing or having Reason to believe that *he* will thereby cause *wrongful Loss* to any Person whose Interest in the Matter

Matter <i>he</i> especially is <i>lawfully bound</i> to guard is liable to Imprisonment for Two Years, and also to Fine.	No. of the Penal Co
441. Whoever commits <i>Theft</i> is liable to Imprisonment for Two Years, and also to Fine.	364 384.
442. Whoever commits <i>Embezzlement</i> or <i>Breach of Trust</i> is liable to Imprisonment for Three Years, and also to Fine.	387
443. Every Officer who commits <i>Embezzlement</i> or <i>Breach of Trust</i> , with respect to anything which <i>he</i> has the Care, Possession, or Control by reason of <i>his</i> Office, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to fine.	388
See Act XIII. 1850.	
444. Whoever commits <i>Theft</i> , when armed with any Weapon, is liable to Imprisonment for Three Years, and also to Fine.	367
445. Whoever <i>steals</i> any Will, or any <i>Document</i> showing Title to <i>Property</i> , is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.	
446. Whoever <i>steals</i> any Register, Record, or <i>Document</i> kept by any <i>Officer</i> in discharge of <i>his</i> Office, or made or issued by Authority of a <i>Judicial Officer</i> , is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.	
447. Whoever <i>steals</i> any Letter or Packet, or anything therein contained, while in the Care of any <i>Officer</i> of the Post Office, is liable to Imprisonment for Three Years, and also to Fine.	366
448. Whoever commits <i>Theft</i> in any Shop or Warehouse, or in any Building or enclosed Place used for the Custody of <i>Property</i> , or in any <i>Vessel</i> , is liable to Imprisonment, If armed with any Weapon, for Five Years : If not armed, for Three Years ; and in either Case is also liable to Fine.	
449. Whoever commits <i>Theft</i> in any <i>Dwelling</i> , or in any Building used as a Place for Worship, is liable, If armed with any Weapon, to Transportation or Imprisonment for Seven Years, If not armed, to Imprisonment for Three Years ; and in either Case is liable to Fine.	
450. Whoever in the <i>Night</i> commits <i>Theft</i> in any <i>Dwelling</i> or Building used as a Place for Worship, is liable to Transportation or Imprisonment ; For Ten Years, if armed with any Weapon : For Seven Years, if not armed ; and in either Case is also liable to Fine.	

DIVISION II.

Robbery and Extortion.

451. Whoever, with Intent to commit <i>Robbery</i> or <i>Extortion</i> , puts or endeavours to put any Person in Fear, is liable to Imprisonment for One Year, and also to Fine.	370
452. Whoever, with Intent to commit <i>Robbery</i> or <i>Extortion</i> , puts or endeavours to put any Person in Fear, either for <i>himself</i> or any other Person, of Death, <i>Maim</i> , or <i>grievous Hurt</i> , is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.	372
453. Whoever, with Intent to commit <i>Robbery</i> or <i>Extortion</i> , puts or endeavours to put any Person in Fear of being falsely accused of any <i>Felony</i> , or of the Intent to commit any <i>Felony</i> , is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.	374
454. Whoever commits <i>Robbery</i> or <i>Extortion</i> is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.	369 377

The Punishment proposed for *Extortion* in the Code is Three Years Imprisonment, not longer in Duration than for simple Theft.

455. Whoever commits *Robbery* or *Extortion* being a *Ministerial Officer*, or while armed with any *Weapon*, is liable to Transportation or Imprisonment, for Ten Years, and in either Case also to Fine.

456. Whoever commits *Robbery* or *Extortion* of any *Will*, or *Document* showing Title to *Property*, is liable to Transportation or Imprisonment for Fourteen Years, and in either Case also to Fine.

457. Whoever commits *Robbery* or *Extortion* of any Register, Record, or *Document* kept by any *Officer* in discharge of his Office, or made or issued by Authority of a *Judicial Officer*, is liable to Transportation or Imprisonment for Fourteen Years, and in either Case also to Fine.

458. Whoever commits *Robbery* or *Extortion* in any Shop or Warehouse, or in any Building or enclosed Place used for the Custody of *Property*, or in any *Vessel*, is liable to Transportation or Imprisonment,

For Fourteen Years, if armed with any *Weapon* :

If not armed, for Ten Years ; and in either Case is also liable to Fine.

459. Whoever commits *Robbery* or *Extortion* in any *Dwelling*, or in any Building used as a Place for Worship, is liable to Transportation or Imprisonment,

For Life, if armed with any *Weapon* :

If not armed, for Fourteen Years ; and in either Case is also liable to Fine.

460. Whoever in the *Night* commits *Robbery* or *Extortion* in any *Dwelling*, or any Building used as a Place for Worship, is liable to Transportation or Imprisonment for Life, and in either Case also to Fine.

371 461. Whoever commits *Robbery* or *Extortion*, by putting any Person in Fear, either for *himself* or any other Person, of Death, *Maim*, or *grievous Hurt*, is liable to Transportation or Imprisonment for Fourteen Years, and in either Case also to Fine.

373 462. Whoever commits *Robbery* or *Extortion*, by putting any Person in Fear of being falsely accused of any *Felony*, or of the Intent to commit any *Felony*, is liable to Transportation or Imprisonment for Fourteen Years, and in either Case also to Fine.

379 463. Every *Dacoit* is liable to Transportation or Imprisonment for Life, and
381 in either Case also to Fine.

380 464. If One of several *Dacoits* commits Murder while they are jointly committing *Robbery* or *Extortion*, every *Dacoit* concerned in such *Robbery* or *Extortion* is liable to Death.

DIVISION III.

Criminal Intrusion.

425 465. Whoever commits *Criminal Intrusion* is liable to Imprisonment for One Month, and also to Fine of Five Hundred Rupees.

466. Whoever commits *Criminal Intrusion* in any *Dwelling*, or Building used as a Place for Worship, with Intent to do anything which is an *Offence* when done without *Intrusion*, is liable to Imprisonment,

For Two Years, if the *Intrusion* is in the *Night* :

426 For One Year, if not in the *Night* ; and in either Case is also liable to Fine.

467. Whoever commits *Criminal Intrusion* in any *Dwelling* or Building used as a Place for Worship,

428 If with Intent to commit any *Offence* punishable by Death or Transportation for Life, is liable to Transportation or Imprisonment for Seven Years :

429 If with Intent to commit any *Felony* or any *Theft* or *Embezzlement*, is liable to Imprisonment for Three Years :

If

If with Intent to commit any other *Misdemeanor* punishable by Imprisonment for One Year or more, is liable to Imprisonment for Two Years; and in every Case is also liable to Fine.

468. Whoever, in a *Dwelling* or Building used as a Place for Worship, where he is by *Intrusion*, commits any *Misdemeanor* not punishable by Imprisonment for more than Three Years, is liable to have the Term of Imprisonment to which he is liable for such *Misdemeanor* lengthened by One Year.

469. Whoever, in a *Dwelling* or Building used as a Place for Worship, where he is by *Intrusion*, commits any *Misdemeanor* punishable by Imprisonment for Five Years, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

470. Whoever, in a *Dwelling* or Building used as a Place for Worship, where he is by *Intrusion*, commits any *Felony*, is liable to have the Term of Transportation or Imprisonment to which he is liable for the *Felony* lengthened by Three Years.

471. Whoever, in a *Dwelling* or Building used as a Place for Worship, where he is by *Intrusion*, puts any Person in Fear of *Hurt*, is liable to Imprisonment for Two Years, and also to Fine. 430

472. Whoever commits *Housebreaking* is liable to Imprisonment, 431
For Three Years, if the *Offence* is committed in the Night : 435
For Two Years, if not in the Night ; and in either Case is also liable to Fine.

473. Whoever commits *Housebreaking*,
If with Intent to commit any *Misdemeanor* punishable by Imprisonment for One Year or more, is liable to Imprisonment for Three Years : 433

If with Intent to commit any *Felony Theft*, or *Embezzlement*, is liable to Imprisonment for Five Years :

If with Intent to commit any *Offence* punishable by Death or Transportation for Life, is liable to Transportation or Imprisonment for Ten Years ; and in every Case is also liable to Fine.

474. Whoever, in a Place where he is by *Housebreaking*, commits any *Misdemeanor* not punishable by Imprisonment for more than Three Years, is liable to have the Term of Imprisonment lengthened by Two Years. 433

475. Whoever, in a Place where he is by *Housebreaking*, commits any *Felony*, or any *Misdemeanor* punishable by Imprisonment for Five Years, is liable to Transportation or Imprisonment,

For Fourteen Years, if the *Offence* is committed in the Night :

For Ten Years, if not in the Night ; and in every Case is also liable to Fine.

476. Whoever in the *Night* commits, in any Place where he is by *Housebreaking*, *Felony* punishable by Transportation or Imprisonment for more than Seven Years, is liable to Transportation or Imprisonment for Life, and in either Case also to Fine. 437

477. Whoever, in any Place where he is by *Housebreaking*, puts any Person in Fear of *Hurt* is liable to Imprisonment for Three Years, and also to Fine. 433

DIVISION IV.

Mischief.

478. Whoever does *Mischief* is liable to Fine of Ten Times the Amount of the *wrongful Loss* caused by such *Mischief*. 400

479. Whoever does or endeavours to do *Mischief*, accompanied with *Assault* or *Show of Assault* of any Person, or while armed with any Weapon, is liable to Imprisonment for One Year, and also to Fine. 416

The Code punishes with Imprisonment any *Mischief* to the Value of Five Rupees, or done to enhance the Value of any Article, or to insult or annoy any Person, or done with Care not to be found out. These Articles seem in some respects too harsh and indiscriminating.

480. Whoever does *Mischief* by killing, *maiming*, or poisoning any Animal, is liable to Imprisonment for Two Years, and also to Fine.

481. Whoever does *Mischief* by means of any Animal, is liable to Imprisonment for Six Months, and also to Fine.

See Regulation IX. 1807 (Bengal), which, however, applies only to *Mischief* to Indigo Plant.

482. Whoever does *Mischief* to any public Monument, or any public Building, Fountain, Statue, or other Work of Art put up for public Use or Ornament, is liable to Imprisonment for One Year, and also to Fine.

483. Whoever does *Mischief* to the Fences of any public Road, Walk, or Garden, or of any such Building or Work as is mentioned in Article 482, is liable to Imprisonment for Six Months, and also to Fine.

484. Whoever does *Mischief* to the Value of Ten Rupees to or in any public Building, Road, or Walk, or in any Park or Garden, is liable to Imprisonment for Six Months, and also to Fine.

411 485. Whoever does *Mischief* to any Landmark, or *maliciously* removes any Landmark, is liable to Imprisonment for One Year, and also to Fine.

Mischief to Seamarks, which is a much more important Offence, is provided for in Article 307.

486. Whoever does *Mischief* to any *Document* lawfully issued by Authority of any *Judicial Officer*, or any Register, Record, or *Document* kept by any *Officer* in discharge of *his* Office, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

451 487. Whoever does *Mischief* to any Will, or any *Document* purporting to be a Will, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

452 488. Whoever does *Mischief* to any *Document* which is or purports to be a *valuable Document*, is liable to Imprisonment for Three Years, and also to Fine.

451 489. Whoever *maliciously* endeavours to do *Mischief* to any *Document* lawfully made or issued by Authority of a *Judicial Officer*, or any Register or Record kept by any *Officer* in discharge of his Office, or being or purporting to be a Will or *valuable Document*, is liable to Imprisonment for Two Years, and also to Fine.

490. Every *Officer* who *maliciously* destroys, defaces, or injures any Register, Record, or *Document* which is in *his* Care, or to which *he* has Access by reason of *his* Office, or who *abets* any Person in *maliciously* destroying, defacing, or injuring any such Register, Record, or *Document*, is liable to Transportation or Imprisonment for Fourteen Years, and in either Case also to Fine.

491. Whoever does *Mischief* in any *Vessel*, Shop, Warehouse, or other Place used for the Custody of *Property*, where *he* is by *Intrusion*, or which *he* entered with Intent to do *Mischief*, is liable to Imprisonment for Six Months, and also to Fine of Ten Times the Amount of *wrongful Loss* caused by such *Mischief*.

492. Whoever does *Mischief* in any *Dwelling* or Building used as a Place for Worship, where *he* is by *Intrusion*, or which *he* entered with Intent to do *Mischief*, is liable,

If *he* is therein by *Housebreaking*, to Transportation or Imprisonment for Seven Years :

If not, to Imprisonment for Two Years ; and in either Case is also liable to Fine of Ten Times the Amount of *wrongful Loss* caused by such *Mischief*.

493. Whoever does *Mischief* by destroying or damaging any public Bridge or Ferry-boat, or any Toll Gate used for securing Payment of any public Toll, or any Fence of the Approaches to such Toll Gate, Bridge, or Ferry, or any Building or Weighing Machine provided for the Purpose of ascertaining and collecting such Toll, is liable to Imprisonment for Two Years, and also to Fine.

409. 494. Whoever does *Mischief* by destroying or damaging any Quay, Wharf, Lock, Sluice, Floodgate, or other Work belonging to any Dock or Harbour, or

or navigable River or Canal, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine. No. of the Penal Code

495. Whoever does *Mischief* by destroying or damaging any Weir, Dam, or Bank of any Millpond or Fishpond, is liable to Imprisonment for Two Years, and also to Fine. 407

496. Whoever does *Mischief* by destroying or damaging any Part of any, Scabank or Seawall, or the Bank or Wall of any Morass, River, or Canal, so as to put the adjoining Lands in danger of being overflowed, is liable to Imprisonment for Five Years, and in either Case also to Fine. 409

For this Offence the Code proposes only Three Years Imprisonment; the English Act of Crimes and Punishments awards Transportation for Life.

497. Whoever *maliciously* conveys Water into any Mine or any Passage under Ground communicating therewith, or *maliciously* destroys or obstructs any Airway, Waterway, Pit, Level, or Shaft of any Mine, with Intent in either Case to drown, damage, or destroy such Mine, or hinder the working thereof, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

498. Whoever *maliciously* sets Fire to any Coal Mine is liable to Transportation or Imprisonment for Fourteen Years, and also to Fine. 412

499. Whoever *maliciously* sets Fire to any Crop of Corn or other cultivated Vegetable Produce of the Earth, whether growing or severed from the Ground, or to any Forest or Fruit Trees, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine. 412

500. Whoever *maliciously* destroys, or begins to destroy, otherwise than by Fire, any Building used as a Place for Worship, or any *Dwelling* or Building used for the Reception of Persons or *Property*, or for carrying on any Trade or Manufacture therein, or any *Vessel*, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine. 415

501. Whoever *maliciously* sets Fire to a Building used as a Place for Worship, or any *Dwelling* or Building used for the Reception of Persons or *Property*, or for carrying on any Trade or Manufacture therein, or to any *Vessel*, is liable to Transportation or Imprisonment for Fourteen Years, and in either Case also to Fine. 413
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Setting Fire to a Building with any Person in it is made capital by Article 373.

502. Whoever *maliciously* sets Fire to or destroys, or endeavours to set Fire to or destroy, anything *herein* mentioned belonging to the *Queen* or East India Company; that is to say,

Any *Vessel* of War, whether afloat or while building or repairing, or any Timber or Materials provided for building or repairing or fitting out such *Vessel*, or any Fort, Arsenal, Magazine, Barrack, Dock-yard, Rope-yard, Victualling or other Office, used for the Military or Naval Service of the *Queen* or the East India Company, or any Military or Naval Stores or Ammunition, or any Place where such Ammunition or Stores are kept, is liable to suffer Death.

DIVISION V.

Miscellaneous.

Some of these Offences might have been classed as Breaches of Trust.

503. Whoever *dishonestly* opens any closed Box or other Receptacle containing or supposed by *him* to contain *Property*, by any Means whereby such Receptacle or any Fastening thereof is injured, or by picking any Lock, is liable to Imprisonment, 439
440

For three Years, if the Box or other Receptacle was intrusted either by Law or express Contract to *his* Care or Possession:

For Two Years, if not so intrusted to *him*; and in either Case is also liable to Fine.

504. Whoever *unlawfully* opens any Packet containing any *Document*, or *unlawfully* opens any Letter, is liable to Imprisonment for Six Months, and also to Fine of Five hundred Rupees. 453

No. of the
Penal Code.
454

505. Every *Officer* of the Post Office who *unlawfully* opens any Letter or Packet intrusted to him as an *Officer* of the Post Office, is liable to Imprisonment for Two Years, and also to Fine.

451

506. Whoever *fraudulently* conceals any Will, or any *Document* purporting to be a Will, is liable to Transportation or Imprisonment for Seven Years, and in either Case also to Fine.

507. Whoever *fraudulently* conceals any *valuable Document*, or any *Document* purporting to be a *valuable Document*, is liable to Imprisonment for Three Years, and also to Fine.

508. Every Person who *unlawfully* detains the Chest, Tools, or *Property* of any Seaman, is liable to Fine of One hundred Rupees.

See Act XXVIII. 1850.

CHAPTER XVII.

Scandal.

469

509. Whoever, by Words spoken, written, or printed, or by any Sign, Drawing, or Device, *wilfully* avers or implies, directly or indirectly, otherwise than in a *privileged Communication*, anything in Dishonour of any Person or Institution, or whereby such Person or Institution may be in Danger of public Hatred or Contempt, is said to *utter Scandal* of that Person or Institution.

510. *Privileged Communications* are those which concern the Government of the Country, or which are made, directly or indirectly, between any Person and a Barrister, Advocate, Attorney, or Agent, duly admitted to practise as such in a *Court of Justice*, in discharge of his professional Duty, or for better enabling him to give legal Advice and Assistance, or which are lawfully made without *Malice* in a *Court of Justice*, or in the course of any Inquiry or Proceeding preliminary to or consequent upon a Proceeding in a *Court of Justice*, or for hindering the Commission of any *Offence*, or discovering any *Offender*, or otherwise in furtherance of Justice.

511. It is *Scandal*, however obscurely, ambiguously, or ironically expressed, if *uttered* in such wise as to be commonly understood to aver or imply anything which if plainly expressed would be *Scandal*.

512. *Scandal* which is false is *Slander*, whether or not it is known by the *Utterer* to be false.

513. *Scandal* which is written or printed, drawn or engraved, is a *Libel*.

514. A *Libel* which is *uttered* without the Name of its real Author is said to be *Anonymous* or to be *uttered anonymously*.

515. Every Person who is knowingly concerned in composing or publishing any *Scandal* is an *Utterer* of it.

516. Whoever *utters* any *Scandal* of the *Queen*, or of the Government of the *Queen*, or East India Company, is liable to Imprisonment for Three Years, and also to Fine.

517. Whoever *utters* any *Scandal* of any Foreign Sovereign, Ambassador, or other Dignitary, with Intent to disturb the Peace and Friendship between *Her Majesty* or the East India Company and the Ruler of any Foreign State, or whereby such Peace or Friendship is disturbed, is liable to Imprisonment for Three Years, and also to Fine.

518. Whoever *utters Scandal* of any Person alive or dead, unless in the Cases *herein* excepted, is liable to Imprisonment for Six *Months*, and also to Fine.

The Code excepts from its Definition of Defamation all true Statements. See Clause 470. But see Sixth Report of Commissioners on Criminal Law, p. 42 et seq. See also 6 and 7 Viet. c. 96.

The excepted Cases are where the *Scandal* is an Opinion, *uttered* in good faith, according to the best Knowledge and Belief of the *Utterer* :—

471

First.—Concerning the Behaviour of an *Officer* in discharge of his Office, and of his Character so far as it appears from such Behaviour :

Secondly.

Secondly.—Concerning the Behaviour of any Person with reference to any public Question, and of *his* Character so far as it appears from such Behaviour :

Thirdly.—Concerning any Case, civil or criminal, which has been decided by any *Judicial Officer*, or the Behaviour of any Person as a Party, Agent, or Witness in such Case, or of *his* Character so far as it appears from such Behaviour :

This Exception in the Code extends also to pending Cases.

Fourthly.—Concerning any Book, Painting, Sculpture, or other Work of Art, Science, or Literature, published or publicly shown, or any public Show or Entertainment, or the Behaviour and Character of any Person concerned in publishing and showing the same, so far as thereby appears :

Fifthly.—Concerning the Behaviour of any Person in any Matter, with respect to which the *Utterer* has lawful Authority over the Person concerning whom it is uttered, or had such Authority at the Time of the Behaviour to which the Opinion relates :

Sixthly.—Given as a Warning for the Benefit of the *Utterer* or Person to whom it is uttered, or some other Person, who is believed by the *Utterer* to be in danger of doing or suffering *Wrong* for Want of such Warning :

Seventhly.—When the *Utterer* of the *Scandal* has good Reason for believing that it is for the public Benefit that it should be known, either generally or to the Person to whom it is uttered :

Eighthly.—Uttered of a dead Person in any historical or biographical Account, without any Purpose of giving Pain or doing *Wrong* to any living Person.

519. The excepted Cases do not extend to justify the *Utterance* of *Scandal* :—

First.—If it charges any Person with the Commission of any *Offence* of which *he* has not been *convicted*, unless such Charge is made in due Course of Law, or to an *Officer* of *Justice*, or any Person engaged in discovering or taking into Custody the Person who has committed such *Offence* :

If a Person is libelled by being charged with an indictable Offence, there would be much Inconvenience in trying him for that Offence on the Trial of the Libeller, if the latter in his Defence should justify the Libel ; and the Inconvenience would hardly be less if the Evidence for and against him had to be produced, leaving him unpunished if found to have committed the Offence, and in either Case liable to be afterwards indicted for it. Yet One of these Consequences is inevitable if the Truth of such a Libel may be pleaded in Justification.

Secondly.—If it withholds any Part of the Truth of the Matter, concerning which the *Scandal* is uttered, which is then known or with reasonable Care might have been then known to the *Utterer*.

As if One were to aver truly that scandalous Reports had been at some previous Time spread and believed of any Person, and were to conceal his Knowledge that the Person defamed had successfully prosecuted the Author of them for Slander.

Thirdly.—If the *Scandal* is an *anonymous Libel*.

The Effect of this last Exception is to leave the Law of Libel as it now is, in the Case of anonymous Libels.

520. Whoever *maliciously utters Slander* of any Person is liable to Imprisonment for Two Years, and also to Fine.

521. Whoever *maliciously utters an anonymous Libel*, which is *Slander*, is liable to Imprisonment for Three Years, and also to Fine.

522. The Possessor of any Printing Press or other Machine, who knowingly allows it to be used for printing any *Libel*, is liable to the same Penalty as the *Utterer* of the *Libel*.

523. Whoever sells or offers for Sale, or distributes or endeavours to distribute, any *Libel*, is liable to the same Punishment as an *Utterer* of the *Libel*.

This is confined, in the Code, to the Case of the Person who *first* sells or offers it for Sale.

CHAPTER XVIII.

Unlawful Threats, Insults, and Annoyances.

- 186 524. Whoever *maliciously* threatens to do any *Wrong* or to utter any
482 *Scandal* concerning any Person, meaning thereby to cause Fear or Pain to
483 *him*, or to compel or prevail on *him* to do anything which *he* is not willing
to do, or to refrain from doing anything which *he* has a lawful Right to do, is
liable to Imprisonment for Two Years, and also to Fine.
- 283 525. Whoever *maliciously*, or with Intent to compel or prevail on any Person
to do anything which *he* is not willing to do, or to refrain from doing anything
which *he* has a lawful Right to do, directly or indirectly threatens or endeavours
to *hurt himself* or any other Person, or to do any other Act, in order that
he may put any Person in Danger or Fear of becoming liable to Divine Dis-
pleasure or the Guilt of Sin, or that *he* may cause it to be believed by any One
that any Person has incurred such Guilt or Displeasure, is liable to Two Years
Imprisonment, and also to Fine.
- 485 526. Whoever in any Place where *he* is by *Intrusion*, or in any public Place,
487 *wilfully* behaves *himself* so as to insult or annoy any Person, is liable to
488 Imprisonment for One *Month*, and also to Fine of One hundred Rupees.
- 486 527. Whoever by any lascivious or obscene Word, Gesture, Representation,
or Behaviour, insults the Modesty of any *Woman*, is liable to Imprisonment
for Six *Months*, and also to Fine.
- 276 528. Whoever *maliciously* disturbs any Person lawfully engaged in the
278 Performance of Religious Worship, or any religious or funeral Ceremony, with
280 Intent to insult or annoy any Person, is liable to Imprisonment,
For One Year, if in causing such Disturbance, *he assaults* or makes
Show of assaulting any Person :
For Six *Months*, in every other Case ; and in either Case is liable to
Fine.
- 275 529. Whoever *maliciously* damages or defiles any Place used for Religious
280 Worship, or anything held holy by any Person, or any Burial Ground or Tomb,
or offers any Dishonour to any Human Corpse, meaning to insult or annoy
any Person, is liable to Imprisonment for One Year, and also to Fine.

CHAPTER XIX.

Criminal Breach of Contract.

- 163 530. Whoever, being *lawfully bound* to guide or carry any Person or
Property, from one Place to another Place, *unlawfully* refuses or neglects to
do so, meaning or having Reason to believe that *he* will thereby cause *Wrong*
to any Person, is liable to Imprisonment for One *Month*, and also to Fine of
One hundred Rupees.
- 165 531. Whoever, being *lawfully bound* to take care or supply the Wants of
any Person, who, by reason of Youth, Unsoundness of Mind, or Disease, is
helpless or unable to take care of *himself*, *unlawfully* refuses or neglects to
do so, is liable to Imprisonment for Six *Months*, and also to Fine of Five
hundred Rupees.
532. Every Apprentice who absconds from *his* Service, or is guilty of any
Misbehaviour in *his* Service, is liable to Confinement in *his* Master's House,
or on board of the *Vessel* to which he belongs, and to a Diet of Bread and
Water or other plain wholesome Food, for One *Month* ; or, if not a *Woman*,
is liable to be privately whipped, and also imprisoned for One *Month* in any
Place other than a Criminal Gaol, of which Imprisonment One Week may be
solitary.
- See Act XIX. 1850. Sec. 15.
533. Every Seaman, *lawfully bound* to serve on board of any *Vessel*, who
unlawfully leaves or absents *himself* from the *Vessel*, or unlawfully disobeys
any

any *binding Order* of any *Officer* of that *Vessel*, is liable to Imprisonment for One *Month*, and also to Fine of One hundred Rupees.

See Article 156, when this Offence is committed on the High Seas.

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534. Every Seaman, lawfully bound to serve on board of any *Vessel*, who unlawfully deserts from such *Vessel* in any Foreign Port, other than that at which *he* took Service, is liable to Imprisonment for Six *Months*, and also to Fine of Five hundred Rupees.

535. Every Person, who counsels or persuades any Seaman to desert, or knowingly harbours any Seaman who has deserted, or counsels or persuades any Seaman to disobey any Law or *binding Order* which *he* ought to obey, is liable to Fine of Five hundred Rupees.

536. Every Person who *unlawfully* hires or engages any Seaman, or asks or takes, directly or indirectly, from any Seaman, any Fee, Reward, or valuable Consideration for hiring or engaging, or endeavouring to hire or engage him as a Seaman, or unlawfully becomes possessed of any Seaman's Register Ticket, or traffics in any such Ticket, is liable to Fine of Five hundred Rupees.

537. The Owner of every *Vessel* which puts to Sea without having on board a sufficient Supply of Medicines and Appliances suitable for Diseases and Accidents likely to happen on Sea Voyages, or who does not take due Care to keep up such Supply, is liable to Fine of Two hundred Rupees, and a further Fine of Five Rupees for every Day during which such Want shall have continued.

538. Every Master or Owner of a *Vessel*, who *wilfully* and without lawful Excuse fails to supply, for the Use of the Seamen and others on board of the *Vessel*, a needful Quantity of good and wholesome Food, Water, and Medicine, is liable to Fine of Five hundred Rupees, and also to a further Fine of Five Rupees in respect of each Person on board of such *Vessel* for every Day during which such Want shall have continued.

CHAPTER XX.

Conspiracy.

539. If Two or more Persons join in a common Purpose for committing an *Offence*, or for doing anything to which the Commission of an *Offence* is incidental, or for *maliciously* annoying or doing any *Wrong* to any Person, or disturbing *him* in the Enjoyment of any lawful Right, or for compelling *him* to do anything which *he* is not willing to do, or to refrain from doing anything which *he* has a lawful Right to do, or for accomplishing any other *unlawful* Design, or any lawful Design by *unlawful* Means, they are said to *conspire*, or to be guilty of *Conspiracy*.

• Husband and Wife may be guilty of *Conspiracy*.

540. Whoever is guilty of *Conspiracy* is liable to Imprisonment for One Year, and also to Fine, whether or not any Act is done in furtherance of the *Conspiracy*.

541. Whoever *conspires* to do anything which is a *Common Nuisance*, or in hindrance of the due Course of Law, is liable to Imprisonment for Three Years, and also to Fine.

542. Whoever *maliciously* *conspires* to accuse any Person falsely of any *Offence* is liable,

To Transportation or Imprisonment for Seven Years, if the *Conspiracy* is to accuse such Person of a *Capital Offence* :

To Imprisonment for Three Years, if the *Conspiracy* is to accuse *him* of any other *Felony* :

To Imprisonment for Two Years in all other Cases :

And in every Case is also liable to Fine.

No. of the
Penal Code.
Sec. 96.

543. When Two or more Persons *conspire*, and any Act is done by any One or more of them in furtherance of the *Conspiracy*, whether or not that Act be in itself an *Offence*, every Person concerned in the *Conspiracy* is liable,

If the *Conspiracy* is for Commission of a *Capital Offence*, to Transportation or Imprisonment for Fourteen Years :

If the *Conspiracy* is for Commission of a *Felony* not *capital*, but punishable with Transportation for more than Seven Years, to Transportation or Imprisonment for Seven Years :

If the *Conspiracy* is for Commission of a *Felony*, to Imprisonment for Three Years :

If the *Conspiracy* is for Commission of a *Misdemeanor*, or for *maliciously* annoying any Person, or *maliciously* disturbing *him* in the Enjoyment of a civil Right, to Imprisonment for Two Years :

And in every Case is also liable to Fine.

True Copies.

T. L. PEACOCK,

East India House, 30th June 1852.

Examiner of India Correspondence

